THE UNITED STATES OIL IMPORT EXPERIENCE.

Terrence J. Woods

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IMPORT EXPERIENCE

Approved by:

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THE UNITED STATES OIL IMPORT EXPERIENCE

A Thesis Presented To The Faculty Of The Graduate School

of

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Partial Fulfillment of the Requirements
for the Degree of

Master of Laws

by

Terrence J. Woods
Lieutenant Commander
Judge Advocate General's Corps
United States Navy

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Errors, omissions, or weaknesses in the paper which follows are my own.

SUMMARY OF CONTENTS

TABLE OF CONTENTS

LIST OF TABLES

Table Page

LIST OF TABLES - Continued

LIST OF ILLUSTRATIONS

ABSTRACT

Woods, Terrence Joseph

B.A. Degree
Marquette University
1963

L.L.B. Degree
Marquette University
Law School
1965

<u>The United States Oil Import Experience</u>

Adviser: Professor William J. Flittie

Master of Laws Degree, conferred August, 1973.

Thesis dated June, 1973.

This thesis traces the history and evolution of the laws, proclamations, and regulations controlling the flow of foreign oil into the United States.

After a brief introduction, a tabular and graphic exposition of the pertinent facts is presented in the form of a statistical prelude. Perhaps the most important factual relationship portrayed is the gradual upward trend in the ratio of oil imports to domestic oil production. At present, approximately one-third of the oil consumed in America is produced abroad. In the future, that figure is conservatively projected to double by the year 1985.

The question of whether this country's seemingly unquenchable thirst for oil should be slaked from domestic or foreign wells together with its security, political, and economic implications is thoroughly and carefully analysed.

The legal ramifications implicit in the question are intensively explored.

Special emphasis is placed on a description of the development of the United States oil import restrictions since March 10, 1959, when pursuant to Section two of the Act of July 1, 1954, as amended, President Eisenhower issued Proclamation 3279 Adjusting Imports of Petroleum and Petroleum Products into the United States. The legislative foundation on which the proclamation is based, the proclamation itself, and its subsequent amendments are scrutinized in detail, focusing on the import, establishment, and subsequent repeal and the oil import-quota fixing provisions.

Section 3(a) of Proclamation 3279 empowered the Secretary of the Interior to issue implementing regulations. The initial oil import regulations, together with subsequent modifications, promulgated by the Secretary, are studied in depth accentuating the allocation provisions.

The administration and application of the regulations is comprehensively considered and commented upon.

Section four of Proclamation 3279 authorized the Secretary of Interior to provide for the establishment and operation of an Appeal Board. The composition, jurisdiction, procedures and decisions of this Board are reviewed and reported.

The cases concerning oil import regulation reaching the courts for judicial review are collected and abstracted.

Finally, alternatives are evaluated, conclusions drawn and recommendations made.

CHAPTER I

INTRODUCTION

The Import of Oil

Near the end of a winter, 1972, weekend, about halfway through the Sunday night movie, right between a couple of commercials -- it happened! First a few of the more than 3000 different products made from petroleum were flashed on the television screen and identified. Everything from aspirin to antifreeze, it seemed, was derived from oil. Then the rythmic sound of a pulsating heart was heard throbbing as the scene changed and a horizontally striped red, white, and blue picture of America spread across the tube. An oscilloscope type, electronic image of the pounding heartbeat was graphically displayed in the white coast to coast gap extending through the center of the country leaving the subconscious impression, that although America faced a critical problem, the flow of its lifeblood was being effectively monitored.

Then in a deep, well-modulated voice the announcer said:

> Things keep running because of oil.
> Every minute Americans use 430,000 gallons of oil.
> Year by year Americans use more oil than they produce.

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[*] Although preparation of this study was supported by the United States Navy, the opinions expressed are those of the author and are not to be construed as the official views of the Navy Department.

> Seventy-five percent of our energy comes from petroleum and its products.
> That's why you live in energy gap, U.S.A..
> We are the oil companies of North America working to bridge the energy gap.
> A country that runs on oil can't afford to run short.[1]

By midwinter, 1973, this American Petroleum Institute warning had become a harsh reality. Iowa home owners, down to their last cold night's supply of heating oil, worried if and when they would get their next deliveries. As fuel tanks drained dry during the biting cold, Colorado school doors closed, Nebraska corn rotted in streets, and Illinois, Mississippi, and West Virginia factories shut down. All for want of oil![2]

Yet the real impact of the message will probably not dawn on America until some hot Tuesday night in Gary, Indiana, when a steel worker returns home from a hard day at the mill to find, as he reaches into the refrigerator, that - horror of horrors - his beer is warm. If this were not enough, his wife will be in a wild purple funk because her hair dryer does not work.[3] Although both have been advised repeatedly during the past several years of an impending energy crisis,

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[1] American Petroleum Institute spot television advertisement, purchased as a part of a $3,000,000.00 campaign to warn the American public of the energy crisis. It was estimated by the American Petroleum Institute that this information reached 95% of all homes with television sets. Some claim the energy crisis was consciously created and exploited. See "Energy Crisis is Exploited, The Washington Post, Washington, D.C., February 4, 1973, p.1.

[2] U.S. Congress, House, Congressman Baker, "Energy and the Future," 93rd Cong., 1st Sess., February 8, 1973, Congressional Record, Extensions of Remarks at E 769.

[3] U.S. Congress, House, Committee on Interior and Insular Affairs. National Fuels and Energy Policy Hearings. 92nd Cong., 2nd Sess. April 12, 1972, paraphrase of comment of unknown audience member, overheard by author.

they have been figuratively in the dark. Now that they are both literally in the dark, they want to know why.

Economists say it is due to rapidly rising demand and slowly shrinking supply. Sociologists put the blame on too many people using too many electric tooth brushes and driving too many big cars. Businessmen point at environmentalists, who they accuse of turning their backs on technological advance in a naive attempt at revirginization of the earth. Ecologists argue the problem is rooted in business irresponsibilities, like oil-soaked sea gulls, sulphur oxide polluted air, and mass misuse of the nation's countryside. The truth is that it has been brought about by all these things, and the United States is in the throes of what is commonly referred to as an "energy crisis."[4]

In all history prior to 1940 mankind used less energy than he used in the last thirty years.[5] America's energy consumption has multiplied by a factor of thirty times since 1850.[6] Since a country's economic advance is directly proportional to its energy consumption, it is not surprising that the United States, with the world's highest income per person, has the world's highest per capita consumption

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[4] Thomas O'Toole, "Energy - Starved U.S. Seeks Sustenance," The Washington Post, Washington D.C., November 26, 1972, p. 1.

[5] Shell Oil Company, The National Energy Position (Houston, Texas: Shell Oil Company Public Affairs, 1972) p.1.

[6] Chauncey Starr, "Energy and Power,", Scientific American (New York: Scientific American, Inc., Sept., 1971), p. 39.

of energy.[7]

At present with six percent of the world's population, America uses thirty-five percent of the world's energy.[8]

> Today human labor provides energy for far less than one percent of the work performed in factories, refineries and mills in production of their products. Literally our economy and our way of life could not continue without the use of vast amounts of energy.[9]

It is projected that within the next fifteen years, this nation's consumption of energy will double again.[10]

During the twentieth century petroleum has gradually replaced coal as the primary source of energy in the United States. In 1920 coal provided over three-quarters of America's energy. By 1971 petroleum provided more than three quarters of America's energy and oil had become the nation's most important energy source, supplying forty-four percent of the country's energy requirements. Natural gas, another form of petroleum produced by the oil industry, provided an additional thirty-three percent. The remainder came from hydro-electric and nuclear sources, water power providing four and one-tenth percent and atomic power, six-tenths of one percent.[11]

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[7] U. S. Department of the Interior, United States Energy a Summary Review (Washington, D.C.: Government Printing Office, 1972), p.1.

[8] Earl Cook, "The Flow of Energy in an Industrial Society," Scientific American (New York: Scientific American, Inc., Sept., 1971), p. 135.

[9] U. S. Department of the Interior, United States Energy a Summary Review, supra note 7 at 2.

[10] Id. at 9.

[11] Crude Oil, Gas, Gas Liquids Met 77 Percent of 1971 U.S. Energy." The Oil and Gas Journal, April 17, 1972, p. 40.

On the average, every man, woman, and child in America currently uses three gallons of oil every day, half again as much as was used back in the nineteen-fifties.[12] Presently almost all of the energy used to fuel our transportation and about forty percent of the energy used to produce our electricity comes from oil. In addition oil supplies almost half of the energy consumed in our homes for heating and cooking and a quarter of the energy used in our industry.[13]

Projections indicate that we will use more oil in the next decade than in the last century.[14]

Unfortunately the United States has not been self-sufficient in oil since 1948, when it became an importer.[15] Since then oil imports have grown steadily both in terms of volume and as a percent of domestic production. Presently Americans consume over five million more barrels of oil every day than they produce. During 1972 more than thirty percent of the oil used in the United States was produced in foreign countries. The purchase of this foreign oil provided the largest single import market in the world. What is worse, there are not signs of abate-

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[12] American Petroleum Institute, Let's Talk About Oil Background Information on the Petroleum Industry, Washington, D.C., Committee on Public Affairs, American Petroleum Institute, 1972, heading from ad enclosed.

[13] Id., for in-depth treatment of this subject, see also Office of Science and Technology, Patterns of Energy Consumption in the United States, Washington, D.C., Office of Science and Technology, Executive Office of the President (1972).

[14] United States Steel Corporation, "Help Produce More Oil," Business Week, March 29, 1972, p. 65.

[15] Petroleum Industry Research Foundation, Inc., United States Oil Imports, A Case Study in International Trade (New York, Petroleum Industry Research Foundation, Inc., 1958), p.13.

ment in the import trend. It is conservatively estimated that by 1980 the United States will be importing over sixty percent of its oil requirements from abroad.[16] The capital, logistical, and balance of trade implications of these projections are staggering.

Dimensions of the Problem

During the late 1950's at a time when the nation faced an over-supply problem, the flood of imported oil rose and concern grew. Initially the United States Government reacted by urging voluntary oil import restrictions on the importers. When this failed, President Eisenhower, acting under the authority granted in the Trade Agreements Extension Act of 1958, issued Proclamation 3279 of March 10, 1959, establishing a mandatory oil import program.[17] In justification for this action the President states in a White House press release that:

> The new program is designed to insure a stable healthy industry in the United States, capable of exploring for and developing new hemisphere reserves to replace those being depleted.
>
> The basis of the new program, like that for the voluntary program, is the certified requirements of our national security which make it necessary that we preserve to the greatest extent possible, a vigorous, healthy petroleum industry in the United States.[18]

By the early 1970's, at a time when the nation faced an energy

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[16] Thomas O'Toole, "Energy Plan Ends Quotas on Oil Import," The Washington Post, Washington D.C., April 19, 1973, p. 16.

[17] Presidential Proclamation No. 3279, March 10, 1959, 24 Fed. Reg. 1781, 3 C.F.R., 1959 - 1963 Comp., p. 11.

[18] James C. Hagerty, Presidential Proclamation Adjusting Imports of Petroleum and Petroleum Products into the United States, 1959 Statement by the President, (Washington D.C.: The White House, March 10, 1959).

crises, oil imports remained restricted and concern grew. President Nixon, acting under the same authority relied on earlier by President Eisenhower, issued Proclamation 4210 of April 18, 1973, modifying Proclamation 3279 of March 10, 1959, by substituting a license - fee quota system for the Mandatory Oil Import Program and thus suspending direct control over the quantity of crude oil and refined products which could be imported.[19] In justification the President stated, in his long awaited April 18, 1973, Energy Message to the Congress, that the reason action was taken was "in order to avert a short-term fuel shortage and to keep fuel costs as low as possible."[20]

Although supply and security have consistently been factors in the formulation of America's foreign oil policy in the past, it was not until recently that they have emerged as the principal and most significant considerations.

At issue is the question of whether the United States should become increasingly reliant on foreign sources for its supply of oil. If so, to what extent, from which sources, at what cost.

Proponents of the Mandatory Oil Import Program, formerly independent oil producers, having only domestic production, and currently domestic refiners, contend that the United States should not become dangerously dependent on insecure foreign sources of oil because of their vulnerability to political, military, and economic upheavals.

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[19] Presidential Proclamation No. 4210, April 18, 1973, 38 Fed. Reg. 9645.

[20] Richard Nixon, Energy Message to the Congress of the United States (Washington, D.C.: The White House, April 18, 1973), p. 11.

They argue that in order to avoid such disruptions, the United States should restrict imports of admittedly cheaper foreign oil and by so doing support and maintain a viable domestic oil industry. This they conclude would be considerably less expensive than facing a national emergency without a secure source of oil and would tend to alleviate the balance of payments and trade deficit problems. They question how long foreign oil would remain inexpensive if the United States were to become extensively reliant on it.

Opponents of the Mandatory Oil Import Program -- formerly major integrated oil producers having both domestic and foreign production and currently domestic consumer interests -- assert that the expense of the program in terms of consumer cost is prohibitive. They argue that subsidizing and protecting marginal and inefficient domestic operators from the effects of the world market place is too high a price to pay for insurance against a vastly overemphasized risk to security. Finally, they question whether the program attained its security goals of insuring a healthy and vigorous domestic petroleum industry and increasing domestic exploration and discovery, and whether these theoretical advances outweighed the depletion of domestic reserves.

Objectives of This Study

More than a decade has elapsed since the institution of the Mandatory Oil Import Program. During this period little serious attention has been devoted to United States oil import restrictions by the practical lawyer. This paper is written in an endeavor to

to remedy that situation by tracing the history and development of the United States oil import experience.

A Statistical Prelude

There are three principal sources of official, statistical information on oil imports into the United States: The Bureau of Census in the Department of Commerce, The Oil Import Administration, and The Bureau of Mines in the Department of the Interior.

The first source of official statistical information on oil imports is the Bureau of Census in the Department of Commerce. For years the Bureau of Census was the only source of statistical information on the subject. It collects and collates documents received by the Bureau of Customs of the Treasury Department. These documents specify the commodity imported, the amount imported, the value, the country of origin and the district of entry. This information is then tabulated by computer into monthly and annual reports.

FT 135 Foreign Trade - Imports - Commodity by Country presents information on general oil imports and oil imports for consumption into the United States for the current month and cumulative for the current year by all methods of transportation.[21]

FT 246 U.S. Foreign Trade - Imports - TSUSA Commodity by presents data on a calendar year basis on net quantity and value of U.S. Imports for consumption. The import data are classified in terms of the Tariff Schedules of the United States. A seven digit

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[21] United States Department of Commerce, FT 135 Foreign Trade -- Imports -- Commodity by Country (Washington, D.C., Department of Commerce, 1955 to 1973).

tariff commodity number is used as the key to the system. When the first three digits of the number are 475, the commodity is petroleum or a petroleum derivative.[22]

Until relatively recently import information supplied by the Commerce Department formed the basis for the figures used by the Bureau of Mines. Differences between Bureau of Census and Bureau of Mines figures are slight and can be accounted for in different definitions of terms.

The second source of official oil import information is the Oil Import Administration of the United States Department of the Interior. The Oil Import Administration publishes quota allocations to individual companies and reports company's qualified refinery crude oil through-put data. In addition imports by company are reported and records of exchanges maintained. The source of the Oil Import Administration's data is its allocation and licensing procedures as well as its exchange procedure.

The third official source of oil import data is the Bureau of Mines, also in the United States Department of the Interior which publishes monthly Mineral Industry Surveys - Crude Petroleum, Petroleum Products and Natural Gas Liquids. Information on every aspect of the oil industry from production to consumption is included in this report.[23]

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[22] United States Department of Commerce, FT 246 Foreign Trade - Imports - TSUSA Commodity by Country (Washington, D.C.: Department of Commerce, 1955 - 1973).

[23] United States Department of the Interior, Mineral Industry Surveys - Crude Petroleum, Petroleum Products and Natural Gas Liquids, (Washington D.C.: United States Department of the Interior, 1955-1973).

Four tables have statistics on imports. Table one - Supply, Demand and Stocks of All Oils in the United States - reports total national import figures on crude oil and refined products. Table two - Comparative Analysis - breaks down the total national refined products imports aggregated in Table one by individual product. Table fifteen - Imports of Foreign Crude Oil - reports crude oil imports by exporting country and importing district. Table sixteen - Imports of Petroleum Products and Receipts from Puerto Rico and the Virgin Islands by P.A.D. District - is a breakdown of product imports by importing district. Through the years table numbers and titles have changed from time to time. The table and title numbers above cited are from the December, 1971, issue. These surveys are compiled annually into Final Summaries giving preliminary total figures for the year of the report and final figures for the previous year. The final figures in the Final Summaries are then incorporated into Volume II of the Minerals Yearbook published by the Department about two years after the date it bears.[24]

In addition to the official sources of statistical information there are several good industry sources, such as the American Petroleum Institute, the Independent Petroleum Association of America, The National Petroleum Council and DeGolyer and MacNaughton.

The American Petroleum Institute publishes a weekly

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[24] United States Department of the Interior, Minerals Yearbook (Washington, D.C.: United States Government Printing Office, 1918 - 1970).

Statistical Bulletin containing much pertinent information on imports. The Institute also compiles a work entitled Petroleum Facts and Figures, which provides a comprehensive statistical history of the Petroleum Industry's operations.[25]

The Independent Petroleum Association of America also puts out petroleum statistics. Its annual pamphlet, United States Petroleum Statistics, places special emphasis on oil import information and is perhaps the best source of excess capacity information.[26]

The National Petroleum Council also releases statistical projections on an intermittent basis. The United States Energy Outlook, an Initial Appraisal, 1971 - 1985 is one such release.[27]

Finally, the distinguished industry consultants, DeGolyer and MacNaughton have for the past quarter of a century prepared an annual compilation of relevant and valid statistical data on the petroleum industry called Twentieth Century Petroleum Statistics. Their work contains some import data.[28]

Free use was made of the foregoing in drawing up the following tabular and graphic exposition.

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[25] American Petroleum Institute, Petroleum Facts and Figures, (New York, New York; American Petroleum Institute, 1971).

[26] Independent Petroleum Association of America, United States Petroleum Statistics (Washington, D.C.; Independent Petroleum Association of America, 1972).

[27] The National Petroleum Council, The United States Energy Outlook, An Initial Appraisal, 1971 - 1985 (Washington, D.C.: The National Petroleum Council, 1971).

[28] De Golyer and MacNaughton, Twentieth Century Petroleum Statistics (DeGolyer and MacNaughton, 1944 - 1972).

TABLE 1

WORLD PROVED RESERVES AND PRODUCTION IN THOUSANDS OF BARRELS - 1972[a]

COUNTRY	RESERVES (1000 B)	PRODUCTION (1000 B/D)
ASIA-PACIFIC		
Afghanistan	89,900	0.2
Australia	2,121,460	308.0
Bangladesh	---	---
Brunei-Malaysia	1,500,000	278.0
Burma	75,000	20.0
Cambodia	---	---
Ceylon	---	---
Guam	---	---
India	834,000	151.0
Indonesia	10,005,000	1,027.0
Japan	23,000	15.0
Korea, South	---	---
New Zealand	224,000	2.7
Okinawa (R.I.)	---	---
Pakistan	34,500	9.5
Philippines	---	---
Singapore	---	---
Taiwan	15,000	2.0
Thailand	400	0.2
Total Asia - Pacific	14,922,260	1,813.6
EUROPE		
Austria	175,000	46.6
Belgium	---	---
Cyprus	---	---
Denmark	250,000	3.0
Finland	---	---
France	81,000	31.0
Germany, West	551,000	138.0
Greece	---	---
Ireland	---	---
Italy & Sicily	220,000	21.0
Netherlands	250,000	30.0
Norway	2,000,000	34.0
Poland	---	---
Portugal	---	---
Romania	---	---
Spain	55,000	3.0
Sweden	---	---
Switzerland	---	---
United Kingdom	5,000,000	2.0
Yugoslavia	3,500,000	59.0
Total Europe	12,082,000	367.0

*Source: "Worldwide Oil at a Glance," _The Oil and Gas Journal_, Dec.1972.

TABLE 1 - Continued

WORLD PROVED RESERVES AND PRODUCTION
IN THOUSANDS OF BARRELS - 1972

COUNTRY	RESERVES (1000 B)	PRODUCTION (1000 B/D)
MIDDLE EAST		
Abu Dhabi	20,768,000	1,000.0
Bahrain	375,000	72.0
Dubai	2,000,000	130.0
Iran	65,000,000	4,900.0
Iraq	29,000,000	1,500.0
Israel	9,000	120.0
Jordan	---	---
Kuwait	64,900,000	2,750.0
Lebanon	---	---
Neutral Zone	16,000,000	545.0
Oman	5,000,000	280.0
Qatar	7,000,000	450.0
Saudi Arabia	138,000,000	5,255.0
South Yemen (Aden)	---	---
Syria	7,250,000	120.0
Turkey	550,000	65.0
Total Middle East	355,852,000	17,187.0
AFRICA		
Algeria	47,000,000	1,061.0
Angola (Incl. Cabinda)	1,200,000	135.0
Congo-Brazzaville	5,000,000	7.5
Congo-Kinshasa (see Zaire)	---	---
Dahomey	1,000	---
Egypt	5,200,000	227.0
Ethiopia	---	---
Gabon	1,100,000	125.0
Ghana	---	---
Ivory Coast	---	---
Kenya	---	---
Liberia	---	---
Libya	30,400,000	2,230.0
Malagasay	---	---
Morocco	1,000	0.3
Mozambique	---	---
Nigeria	15,000,000	1,800.0
Rhodesia	---	---
Senegal	---	---
Sierra Leone	---	---
Sudan	---	---
Tanzania	---	---
Tunisia	1,000,000	80.0
Union of South Africa	---	---
Zaire	500,000	---
Total Africa	106,402,000	5,665.8

TABLE 1 - Continued

WORLD PROVED RESERVES AND PRODUCTION
IN THOUSANDS OF BARRELS - 1972

COUNTRY	RESERVES (1000 B)	PRODUCTION (1000 B/D)
WESTERN HEMISPHERE		
Antigua	----	---
Argentina	4,900,000	435.0
Bahamas	---	---
Barbados	750	---
Bolivia	200,000	32.0
Brazil	857,000	167.0
British Honduras	---	---
British West Indies	---	---
Chile	125,000	32.5
Columbia	1,500,000	192.0
Costa Rica	---	---
Cuba	9,000	3.5
Dominican Republic	---	---
Ecuador	5,750,000	59.4
El Salvador	---	---
Guatemala	10,000	---
Honduras	---	---
Jamaica	---	---
Martinique	---	---
Mexico	2,800,000	440.0
Netherlands Antilles	---	---
Nicaragus	---	---
Panama	---	---
Paraguay	---	---
Peru	750,000	60.2
Puerto Rico	---	---
Trinidad & Tobago	2,000,000	143.0
Uruguay	---	---
Venezuela	13,700,000	3,200.0
Virgin Islands	---	---
United States	36,823,271	9,500.0
Canada	10,200,000	1,490.0
Total Western Hemisphere	79,625,021	15,754.6
Total Free World	568,883,281	40,788.6
Communist World	98,000,000	8,910.0
TOTAL WORLD	666,883,281	49,698.6

FIG 1
UNITED STATES
RESERVES
TO
IMPORTS

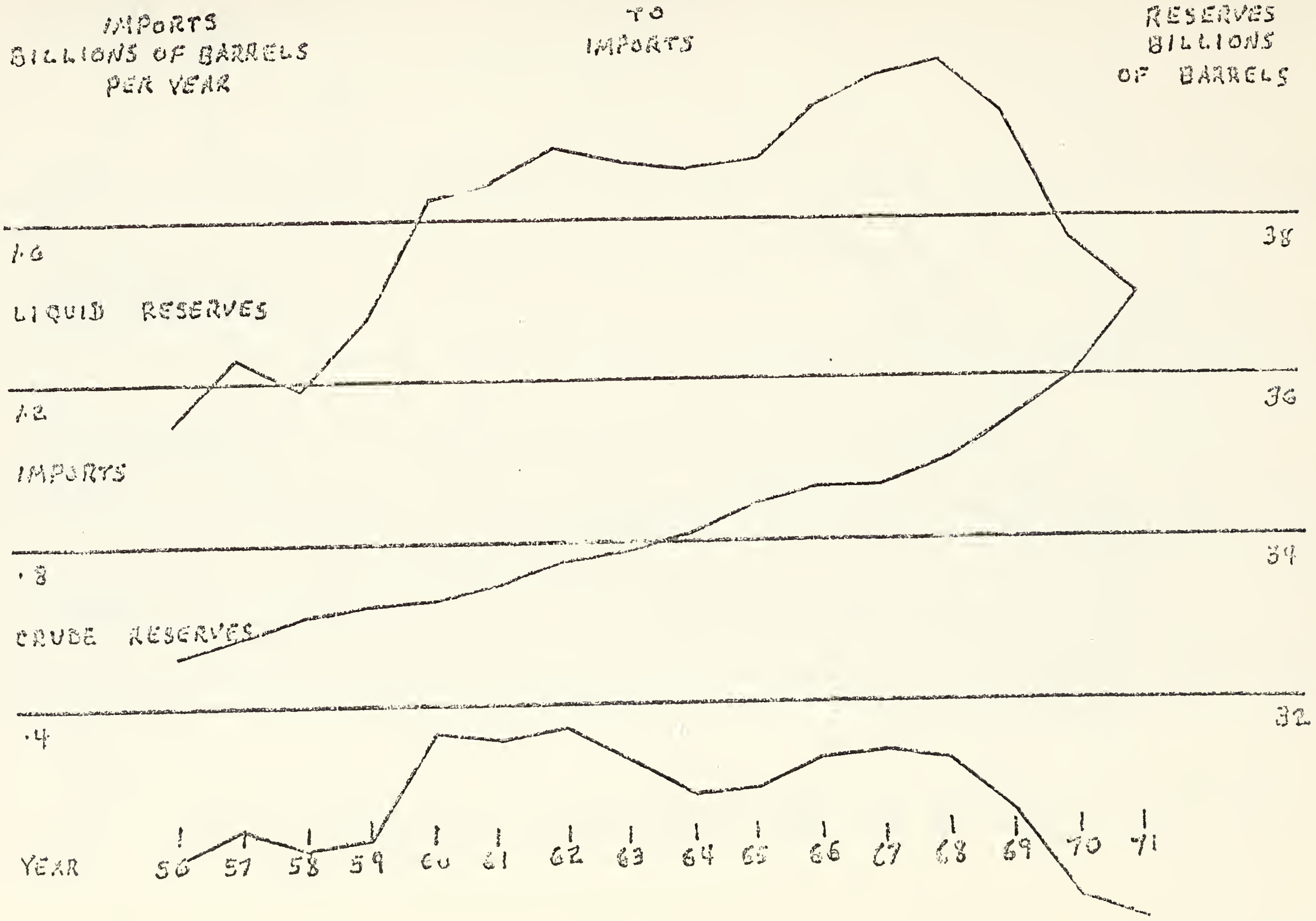

FIG 2
UNITED STATES
RESERVE PRODUCTION RATIOS
TO
IMPORTS

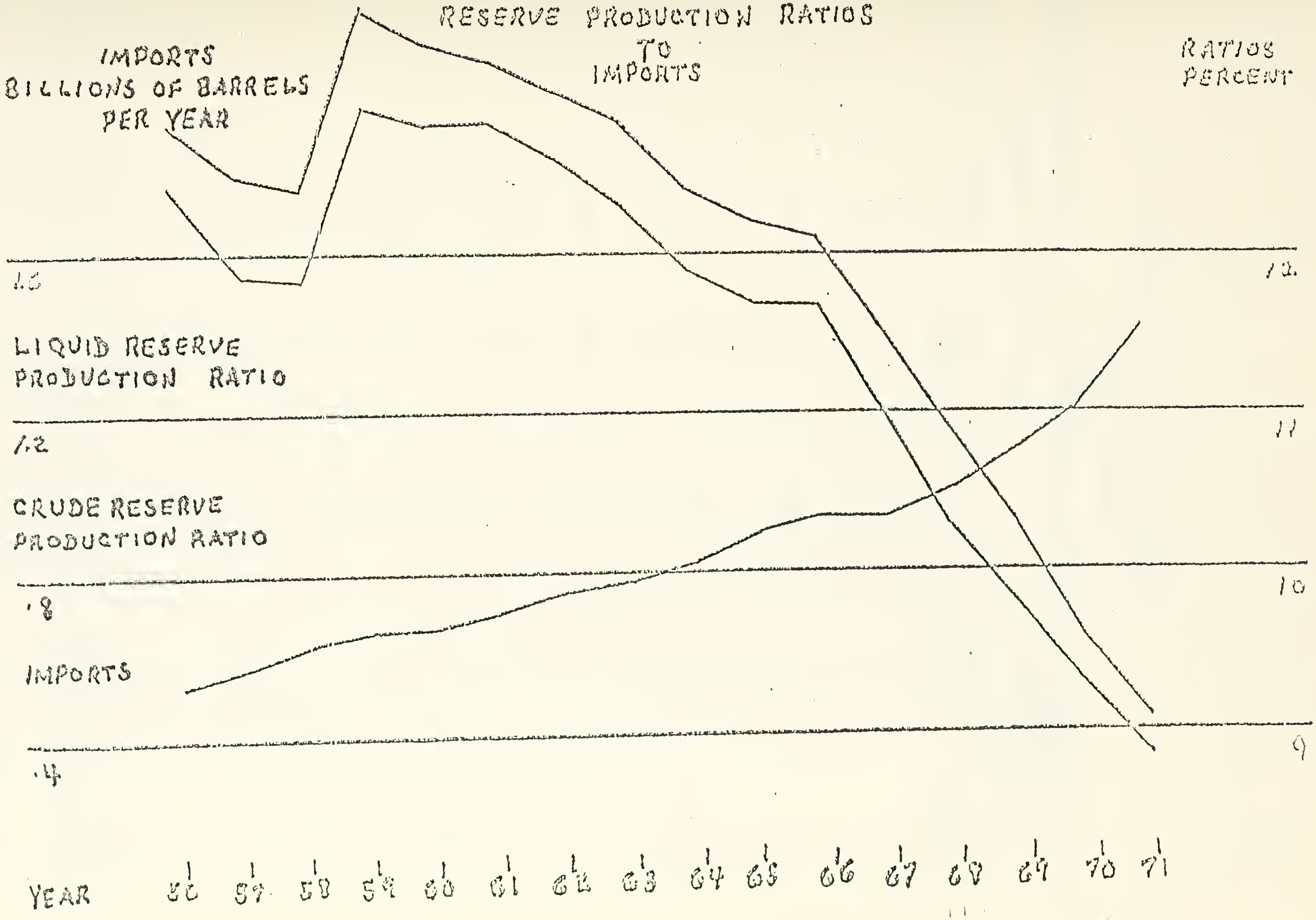

TABLE 2

UNITED STATES RESERVE POSITION IN MILLIONS OF BARRELS 1956 to 1971[a]

DOMESTIC PROVED RESERVES				DOMESTIC RESERVE PRODUCTION RATIOS	
Year	Crude Oil	Gas Liquids	Total	Crude Oil	Total Liquids
1956	30,012	5,439	35,451	12.4	12.8
1957	30,435	5,902	36,337	11.9	12.5
1958	30,300	5,687	35,987	11.8	12.4
1959	30,536	6,204	36,740	12.9	13.5
1960	31,719	6,522	38,241	12.8	13.3
1961	31,613	6,816	38,429	12.8	13.2
1962	31,786	7,049	38,835	12.6	13.0
1963	31,389	7,312	38,701	12.3	12.8
1964	30,970	7,674	38,644	11.9	12.4
1965	30,991	7,747	38,738	11.7	12.2
1966	31,352	8,024	39,376	11.7	12.1
1967	31,452	8,329	39,781	11.0	11.5
1968	31,377	8,614	39,991	10.3	10.9
1969	30,707	8,598	39,305	9.8	10.3
1970	29,632	8,143	37,775	9.3	9.6
1971[b]	29,401	7,703	37,104	8.9	9.1

[a] Source: American Petroleum Institute, Reserves of Crude Oil, Natural Gas Liquids and Natural Gas in the United States and Canada (Washington, D.C.: American Petroleum Institute, 1956 - 1971).

[b] Excludes 9.6 billion barrels of crude oil added for Alaska North Slope.

FIG 3
UNITED STATES
EXPLORATORY ACTIVITY TO IMPORTS

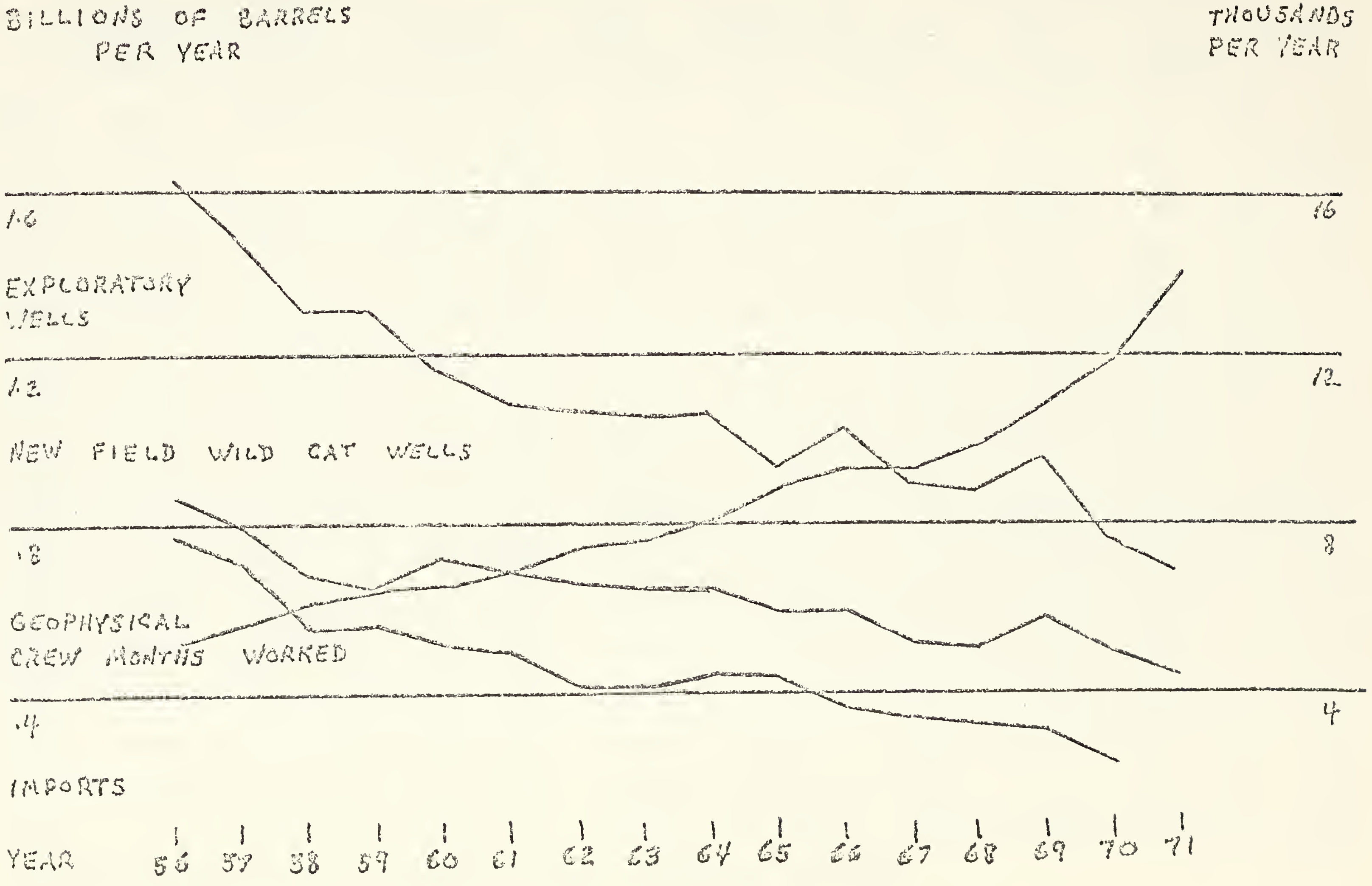

TABLE 3

UNITED STATES EXPLORATORY ACTIVITY 1956 - 1971[a]

Year	Geophysical Crew Months Worked	Thousands of Acres Under Lease	Exploratory Footage Drilled	Exploratory Wells Drilled	Successful Exploratory Wells	Success Ratio	New Field Wild Cat Wells Drilled	Successful New Field Wild Cat Wells	Success Ratio
1956	7,857	383,863	73,981,176	16,173	3,096	19.1	8,709	868	9.9
1957	7,242		69,136,226	14,707	2,810	19.1	8,014	872	10.8
1958	5,731	371,146	61,483,911	13,199	2,567	19.4	6,950	786	11.3
1959	5,696	382,607	63,252,521	13,191	2,614	19.8	6,473	737	11.3
1960	5,207	424,251	55,830,636	11,704	2,189	18.7	7,320	745	10.1
1961	5,024	416,871	54,442,127	10,992	1,970	17.9	6,909	745	10.7
1962	4,231	408,870	53,574,554	10,797	1,982	18.3	6,795	787	11.5
1963	4,174	387,457	53,485,462	10,664	1,978	18.5	6,570	769	11.7
1964	4,406	372,408	55,496,688	10,747	1,796	16.7	6,632	701	10.5
1965	4,471	375,306	49,204,024	9,466	1,461	15.4	6,182	638	10.3
1966	3,835	350,895	55,223,161	10,313	1,608	15.5	6,158	635	10.3
1967	3,496	333,858	52,745,547	9,059	1,595	17.6	5,271	544	10.3
1968	3,390	325,106	53,969,404	8,879	1,293	14.5	5,205	442	8.4
1969	3,259	332,005	57,465,962	9,701	1,700	17.5	5,956	535	8.9
1970	2,521	343,213	45,253,368	7,693	1,271	16.5	5,069	493	9.7
1971		332,647	40,387,969	6,922	1,088	15.7	4,462	434	9.7

[a] American Association of Petroleum Geologists, Bulletin, June 1968.

FIG 4
UNITED STATES
DRILLING ACTIVITY TO IMPORTS

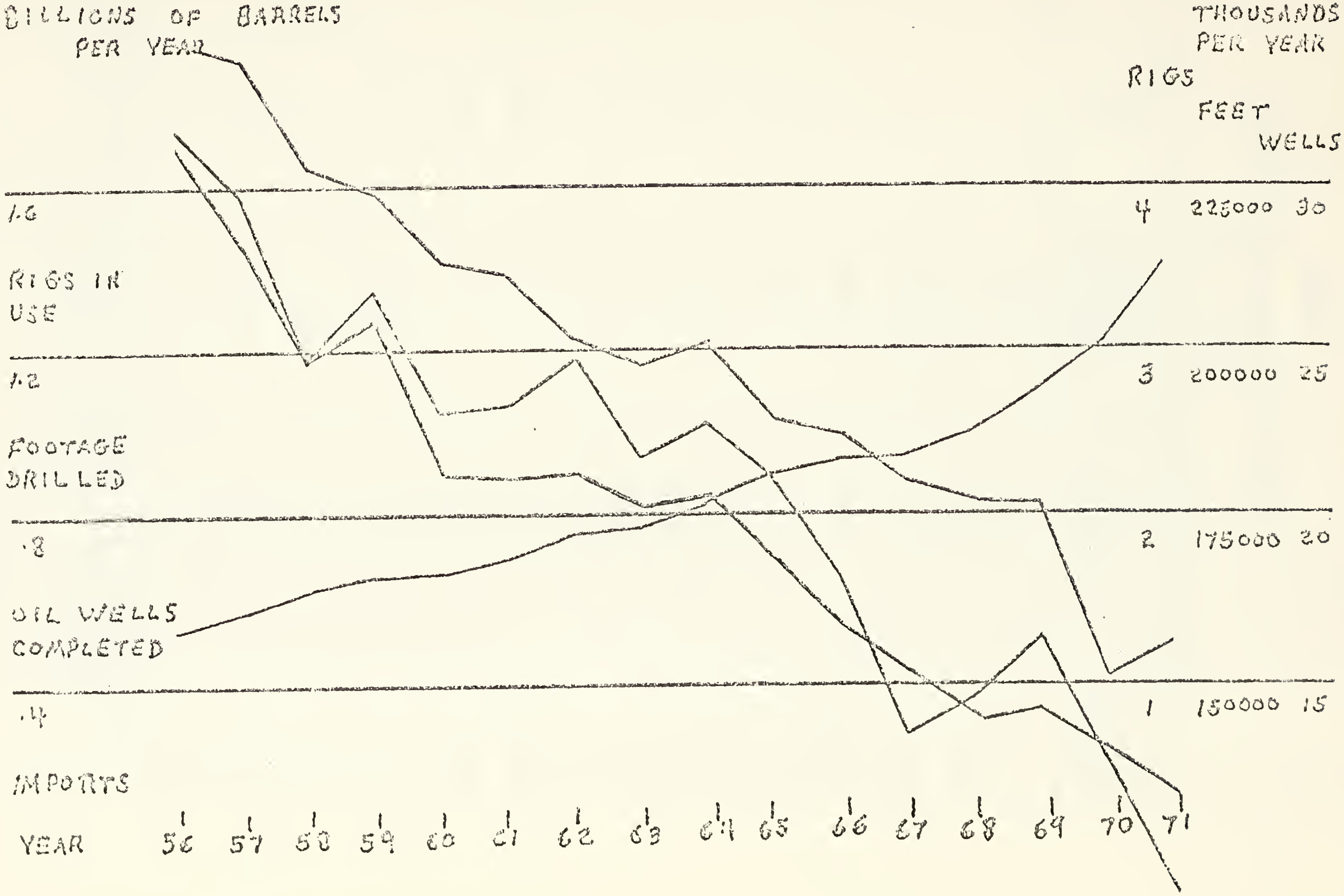

TABLE 4

UNITED STATES DRILLING ACTIVITY
1956 - 1971[a]

Year	Rigs In Use	Footage Drilled (Thousands of Feet)	Wells Completed	Oil Wells Completed
1956	4,845	233,902	58,259	31,196
1957	4,791	223,087	55,024	28,012
1958	4,114	198,224	50,039	24,578
1959	3,991	209,231	51,764	25,800
1960	3,543	190,703	46,751	21,186
1961	3,464	192,116	46,962	21,101
1962	3,089	198,559	46,179	21,249
1963	2,952	184,357	43,653	20,288
1964	3,066	189,922	45,236	20,620
1965	2,800	181,484	41,432	18,761
1966	2,514	165,544	37,881	16,780
1967	2,208	142,959	33,630	15,329
1968	2,110	148,252	32,038	14,227
1969	2,074	157,108	32,187	14,368
1970	1,056	139,266	28,120	13,020
1971	1,235	124,239	25,851	11,858

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[a] Source: American Petroleum Institute, Petroleum Facts and Figures (Washington, D.C.: American Petroleum Institute, 1971 edition).

FIG 5
UNITED STATES
CONSUMPTION, PRODUCTION AND DISCOVERIES
OF ALL OIL

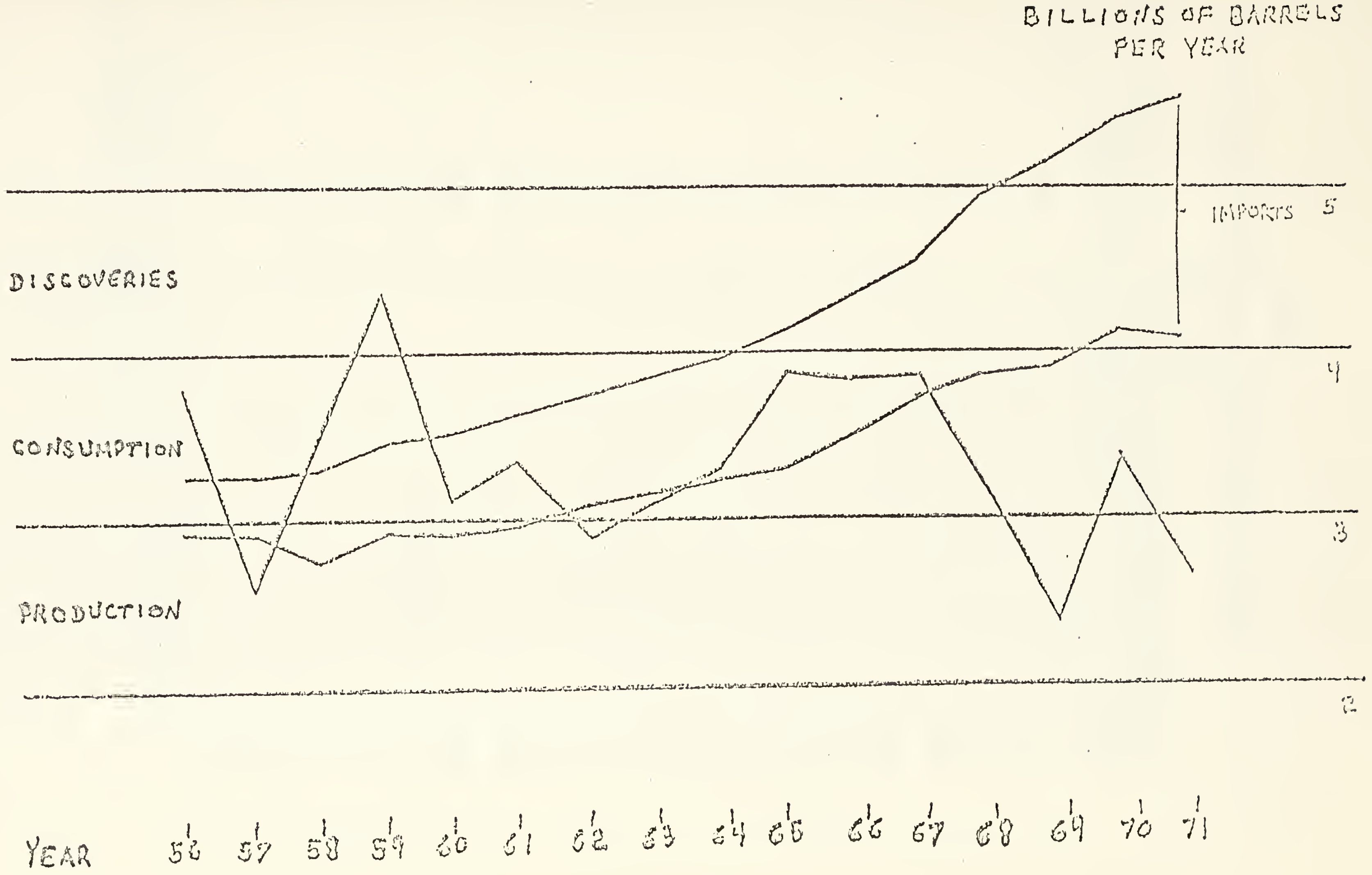

TABLE 5

UNITED STATES DISCOVERIES IN MILLIONS OF BARRELS
1956 - 1971[a]

Year	Crude Oil	Gas Liquids	Total
1956	2,974	810	3,784
1957	2,425	137	2,562
1958	2,608	858	3,466
1959	3,667	703	4,370
1960	2,365	725	3,090
1961	2,658	695	3,353
1962	2,181	733	2,914
1963	2,174	878	3,052
1964	2,665	609	3,274
1965	3,048	832	3,880
1966	2,964	894	3,858
1967	2,962	930	3,892
1968	2,455	686	3,141
1969	2,120	281	2,401
1970	3,089	308	3,397
1971	2,318	348	2,666

[a] Source: Independent Petroleum Association of America, United States Petroleum Statistics,(Washington, D.C: Independent Petroleum Association of America, 1972).

FIG 6
UNITED STATES
SPARE PRODUCTIVE CAPACITY TO IMPORTS
OF ALL OIL

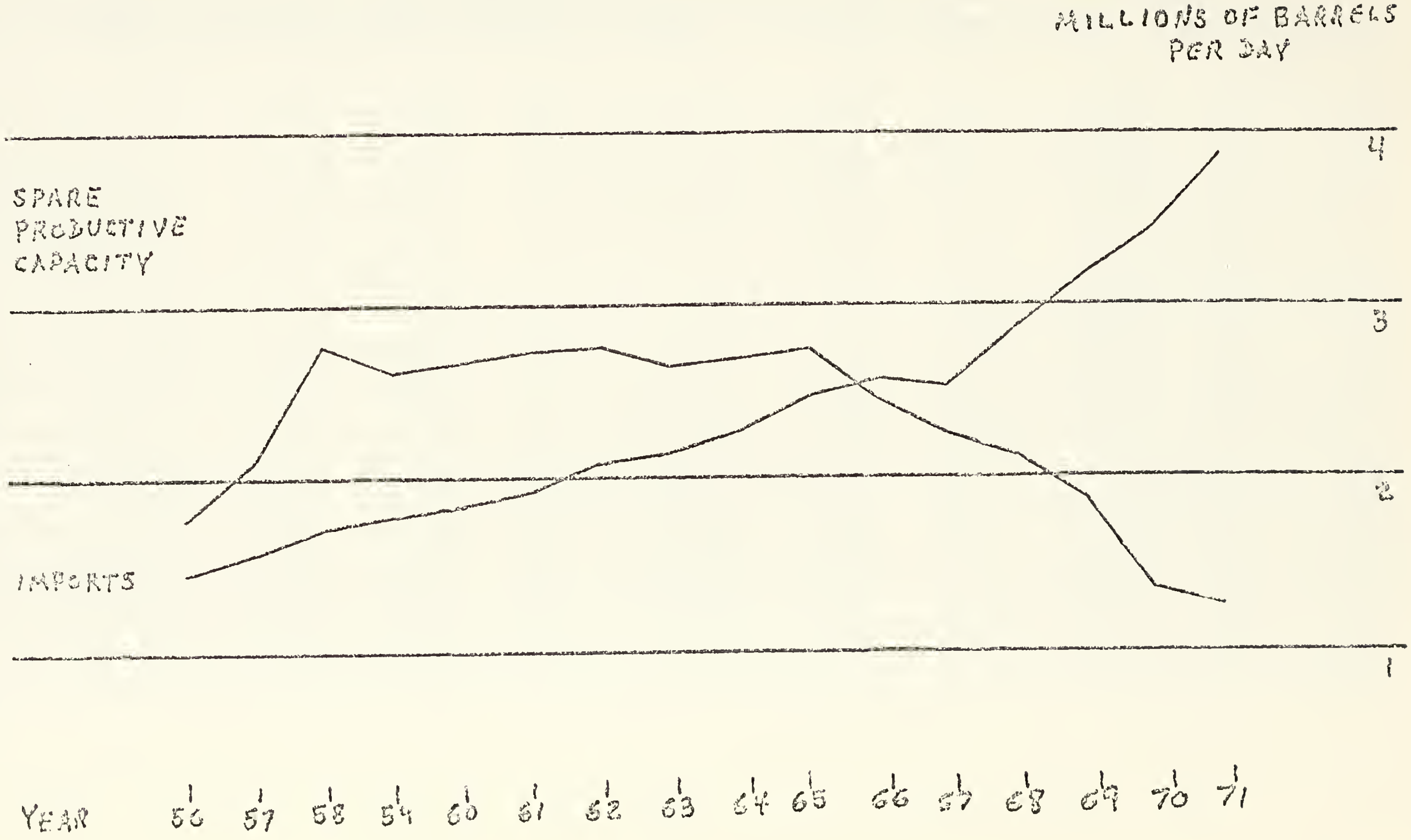

TABLE 6

UNITED STATES PRODUCTIVE CAPACITY IN THOUSANDS OF BARRELS 1956 - 1971[a]

Year	DOMESTIC PRODUCTIVE CAPACITY						SPARE PRODUCTIVE CAPACITY CRUDE OIL			
	Crude Oil		Gas Liquids		Total		Annual Change	Spare		% Spare
	Annual	Daily	Annual	Daily	Annual	Daily		Annual	Daily	
1956	3,259,085	8,929	301,125	825	3,560,210	9,754	+ 487	648,970	1,778	19.9
1957	3,376,250	9,250	310,250	850	3,686,500	10,100	+ 312	759,200	2,080	22.5
1958	3,464,945	9,493	321,200	880	3,786,145	10,373	+243	1,015,795	2,783	29.3
1959	3,524,440	9,656	339,450	930	3,863,890	10,586	+ 163	950,095	2,603	27.0
1960	3,543,420	9,708	352,955	967	3,896,375	10,675	+ 52	975,645	2,673	27.5
1961	3,610,580	9,892	379,965	1,041	3,990,545	10,933	+ 184	988,785	2,709	27.4
1962	3,679,565	10,081	382,885	1,049	4,062,450	11,130	+ 189	1,003,385	2,749	27.3
1963	3,711,685	10,169	397,850	1,090	4,109,535	11,259	+ 88	958,855	2,627	25.8
1964	3,754,390	10,286	429,605	1,177	4,183,995	11,463	+ 117	975,280	2,672	26.0
1965	3,844,910	10,534	446,030	1,222	4,290,940	11,756	+ 248	996,450	2,730	25.9
1966	3,921,195	10,743	467,565	1,281	4,388,760	12,024	+ 209	893,520	2,448	22.8
1967	4,033,750	11,050	512,825	1,405	4,546,075	12,455	+ 307	817,600	2,240	20.3
1968	4,094,570	11,218	543,120	1,488	4,637,690	12,706	+ 168	774,895	2,123	18.9
1969	4,065,005	11,137	578,890	1,586	4,643,895	12,723	- 81	693,135	1,899	17.1
1970	4,019,745	11,013	611,740	1,676	4,631,485	12,689	- 124	504,065	1,381	12.5
1971	3,939,810	10,794	642,400	1,760	4,582,210	12,554	- 219	451,870	2,238	11.5

[a] Id.

FIG 7
UNITED STATES
IMPORT PRODUCTION RATIO
AND
IMPORT CONSUMPTION RATIO

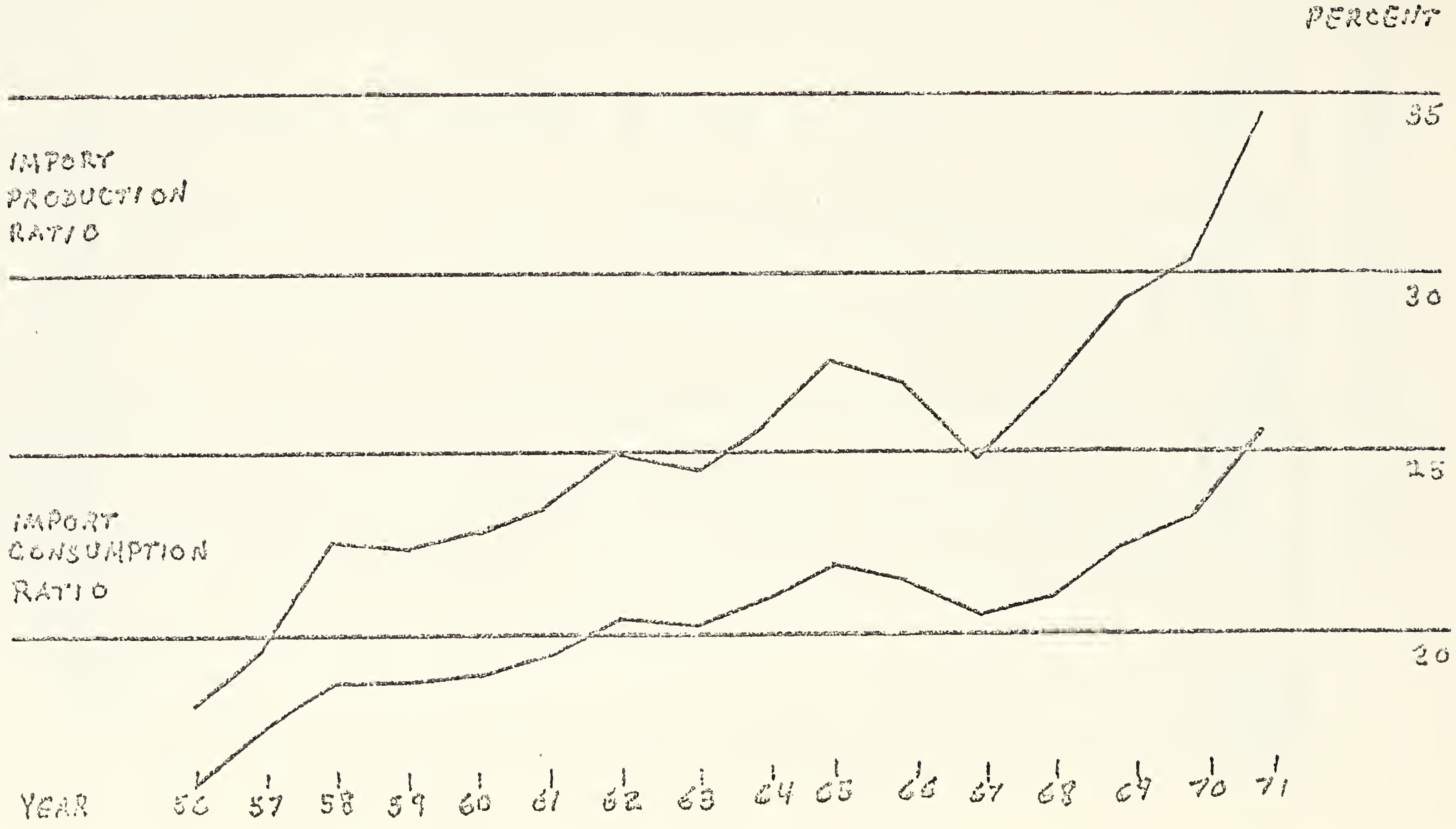

TABLE 7

UNITED STATES PRODUCTION AND IMPORTS OF OIL IN THOUSANDS OF BARRELS 1918 - 1971[a]

Year	Production		Imports		Import Production Ratio
	Annual	Daily	Annual	Daily	
1918	363,928	997	38,963	106	10.7
1919	388,234	1,064	54,198	149	14.0
1920	453,861	1,243	108,822	298	24.0
1921	484,244	1,327	128,792	352	26.6
1922	571,263	1,565	135,873	373	23.8
1923	754,168	2,066	99,653	273	13.2
1924	738,378	2,023	94,581	259	12.8
1925	792,445	2,171	78,200	214	9.9
1926	805,441	2,207	81,320	222	10.1
1927	942,766	2,583	71,736	197	7.6
1928	947,474	2,596	91,557	251	9.7
1929	1,063,561	2,914	108,710	298	10.2
1930	953,331	2,612	105,618	289	11.1
1931	896,524	2,456	86,087	235	9.6
1932	822,471	2,253	74,494	204	9.1
1933	940,834	2,578	45,394	124	4.8
1934	946,329	2,593	50,494	138	5.3

[a] Source: U. S. Department of the Interior, Bureau of Mines. Mineral Industry Surveys Crude Petroleum, Petroleum Products and Natural Gas Liquids (Washington D.C., U. S. Department of the Interior, Bureau of Mines, Annual and December issues for years involved.) See also American Petroleum Institute, Petroleum Facts and Figures, supra note 33 at 283, et seq..

TABLE 7-Continued

UNITED STATES PRODUCTION AND IMPORTS OF OIL
IN THOUSANDS OF BARRELS 1918 - 1971

Year	Production		Imports		Import Production Ratio
	Annual	Daily	Annual	Daily	
1935	1,037,800	2,843	52,635	144	5.1
1936	1,144,959	3,137	57,104	157	5.0
1937	1,331,127	3,647	57,157	156	4.3
1938	1,267,466	3,473	54,308	148	4.3
1939	1,319,110	3,614	59,060	162	4.5
1940	1,412,081	3,869	83,751	230	5.9
1941	1,486,518	4,073	97,142	266	6.5
1942	1,472,364	4,034	35,966	99	2.4
1943	1,595,729	4,372	63,412	174	4.0
1944	1,780,350	4,878	92,311	253	5.2
1945	1,828,539	5,010	113,619	312	6.2
1946	1,851,748	5,073	137,676	377	7.4
1947	1,989,850	5,452	159,389	436	8.0
1948	2,167,264	5,938	188,144	516	8.7
1949	1,999,215	5,477	235,559	645	11.8
1950	2,155,693	5,906	310,261	850	14.4
1951	2,452,676	6,720	308,194	845	12.6
1952	2,513,733	6,887	348,507	955	13.9
1953	2,596,166	7,113	377,499	1,034	14.5
1954	2,567,628	7,035	383,955	1,052	15.0

TABLE 7 - Continued

UNITED STATES PRODUCTION AND IMPORTS OF OIL
IN THOUSANDS OF BARRELS 1918 - 1971

Year	Production		Imports		Import Production Ratio
	Annual	Daily	Annual	Daily	
1955	2,766,325	7,579	455,564	1,248	16.5
1956	2,910,514	7,974	525,591	1,440	18.1
1957	2,912,143	7,978	574,589	1,575	19.7
1958	2,744,152	7,518	620,589	1,700	22.6
1959	2,895,671	7,933	649,583	1,779	22.4
1960	2,915,365	7,987	664,111	1,819	22.8
1961	2,983,616	8,174	699,666	1,917	23.5
1962	3,048,985	8,353	759,793	2,081	24.9
1963	3,153,689	8,640	774,713	2,123	24.6
1964	3,209,332	8,793	826,736	2,265	25.8
1965	3,290,083	9,014	900,772	2,467	27.4
1966	3,496,428	9,579	939,162	2,573	26.9
1967	3,730,285	10,220	925,991	2,537	24.8
1968	3,882,730	10,638	1,039,369	2,848	26.8
1969	3,956,205	10,839	1,155,551	3,166	29.2
1970	4,129,604	11,314	1,248,062	3,419	30.2
1971	4,102,067	11,239	1,414,883	3,877	34.5

FIG 8
UNITED STATES
IMPORTS TO EXPORTS

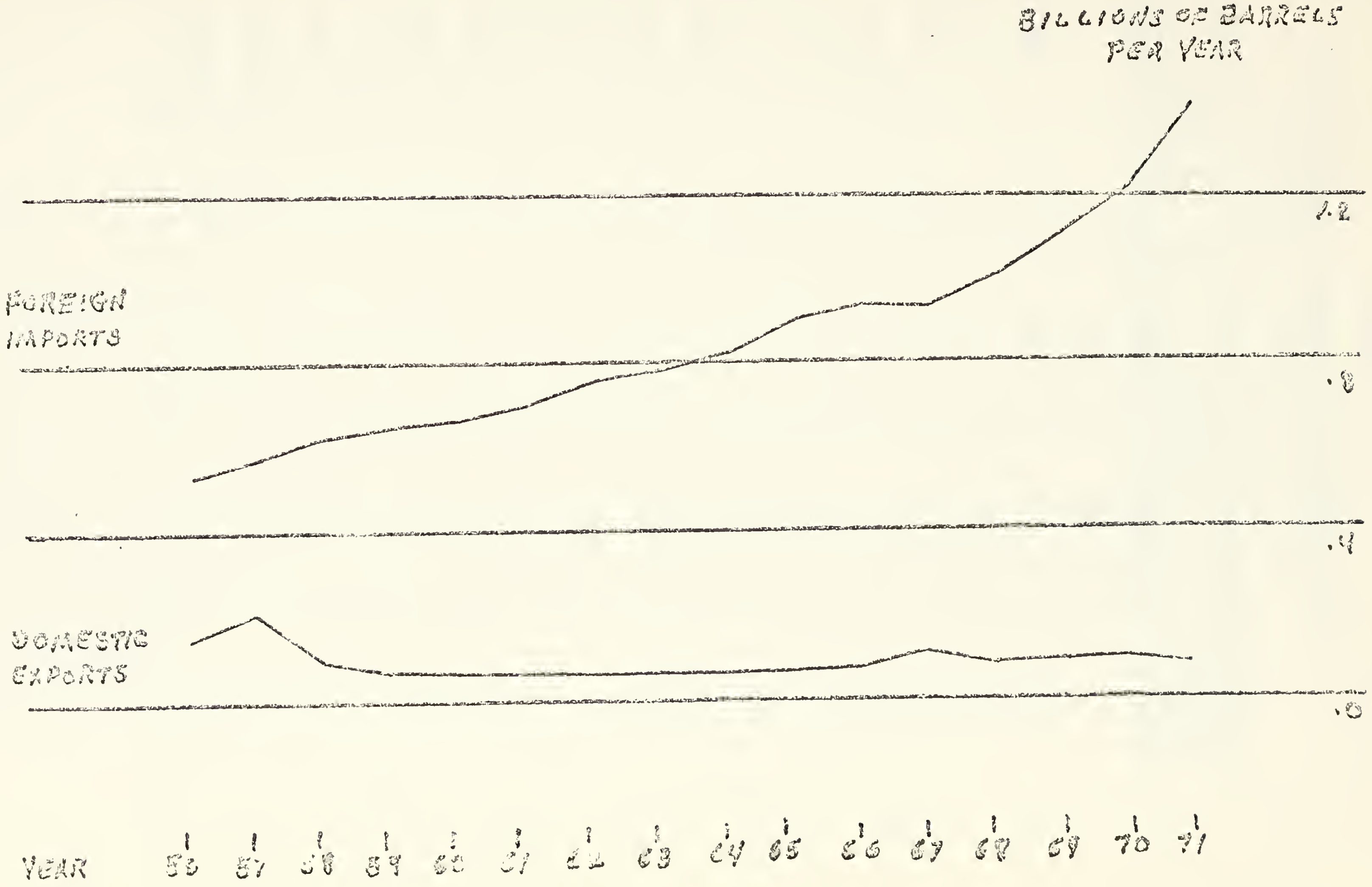

TABLE 8

UNITED STATES CONSUMPTION AND EXPORTS OF OIL IN THOUSANDS OF BARRELS 1918 - 1971[a]

Year	Consumption		Exports		Import Consumption Ratio
	Annual	Daily	Annual	Daily	
1918	--	--	68,012	186	--
1919	378,584	1,037	63,848	175	14.3
1920	486,026	1,332	79,576	218	22.4
1921	523,353	1,434	71,842	179	24.6
1922	632,672	1,733	74,564	204	21.5
1923	743,079	2,036	102,247	280	13.4
1924	722,717	1,980	117,530	322	13.1
1925	756,769	1,073	114,178	313	10.3
1926	780,755	2,139	132,288	362	10.4
1927	873,538	2,393	142,003	389	8.2
1928	883,691	2,421	155,340	426	10.4
1929	1,009,796	2,767	163,334	448	10.8
1930	926,642	2,539	156,869	430	11.4
1931	902,593	2,473	124,681	342	9.5
1932	835,230	2,288	103,527	284	8.9
1933	881,301	2,415	107,014	293	5.2
1934	919,838	2,520	114,834	315	5.5

[a] Id.

TABLE 8-Continued

UNITED STATES CONSUMPTION AND EXPORTS OF OIL
IN THOUSANDS OF BARRELS 1918 - 1971

Year	Consumption		Exports		Import Consumption Ratio
	Annual	Daily	Annual	Daily	
1935	983,317	2,694	129,355	354	5.4
1936	1,092,379	2,993	132,369	363	5.2
1937	1,214,873	3,329	173,241	475	4.7
1938	1,136,705	3,114	194,145	532	4.8
1939	1,230,486	3,371	189,549	519	4.8
1940	1,365,366	3,741	130,466	357	6.1
1941	1,485,779	4,071	108,830	298	6.5
1942	1,449,908	3,972	116,907	320	2.5
1943	1,521,426	4,168	149,957	411	4.2
1944	1,671,263	4,579	207,616	569	5.5
1945	1,772,685	4,857	182,983	501	6.4
1946	1,836,301	5,031	153,123	420	7.5
1947	1,989,803	5,452	164,477	451	8.0
1948	2,217,368	6,075	134,674	369	8.5
1949	2,118,250	5,803	119,376	327	11.1
1950	2,375,057	6,507	111,306	305	13.1
1951	2,606,818	7,142	159,052	436	11.8
1952	2,704,052	7,408	158,188	433	12.9
1953	2,827,074	7,745	146,591	402	13.4
1954	2,832,424	7,760	129,733	355	13.6

TABLE 8 - Continued

UNITED STATES CONSUMPTION AND EXPORTS OF OIL IN THOUSANDS OF BARRELS 1918 - 1971

Year	Consumption		Exports		Import Consumption Ratio
	Annual	Daily	Annual	Daily	
1955	3,087,775	8,460	134,188	368	14.8
1956	3,278,719	8,983	157,386	431	16.0
1957	3,279,545	8,985	207,187	568	17.5
1958	3,315,213	9,083	100,638	276	18.7
1959	3,468,187	9,502	77,067	211	18.7
1960	3,535,805	9,687	73,906	202	18.8
1961	3,619,719	9,917	63,563	174	19.3
1962	3,747,388	10,267	61,390	168	20.3
1963	3,852,448	10,555	75,914	208	20.1
1964	3,962,179	10,855	73,879	202	20.9
1965	4,125,458	11,303	68,288	187	21.8
1966	4,363,190	11,954	72,400	198	21.5
1967	4,544,216	12,450	112,060	307	20.4
1968	4,961,384	13,593	84,544	232	20.9
1969	5,164,171	14,148	84,885	233	22.4
1970	5,406,539	14,812	94,458	259	23.1
1971	5,534,723	15,164	81,685	224	25.6

FIG 9
UNITED STATES
IMPORTS OF CRUDE OIL
AND REFINED PRODUCTS

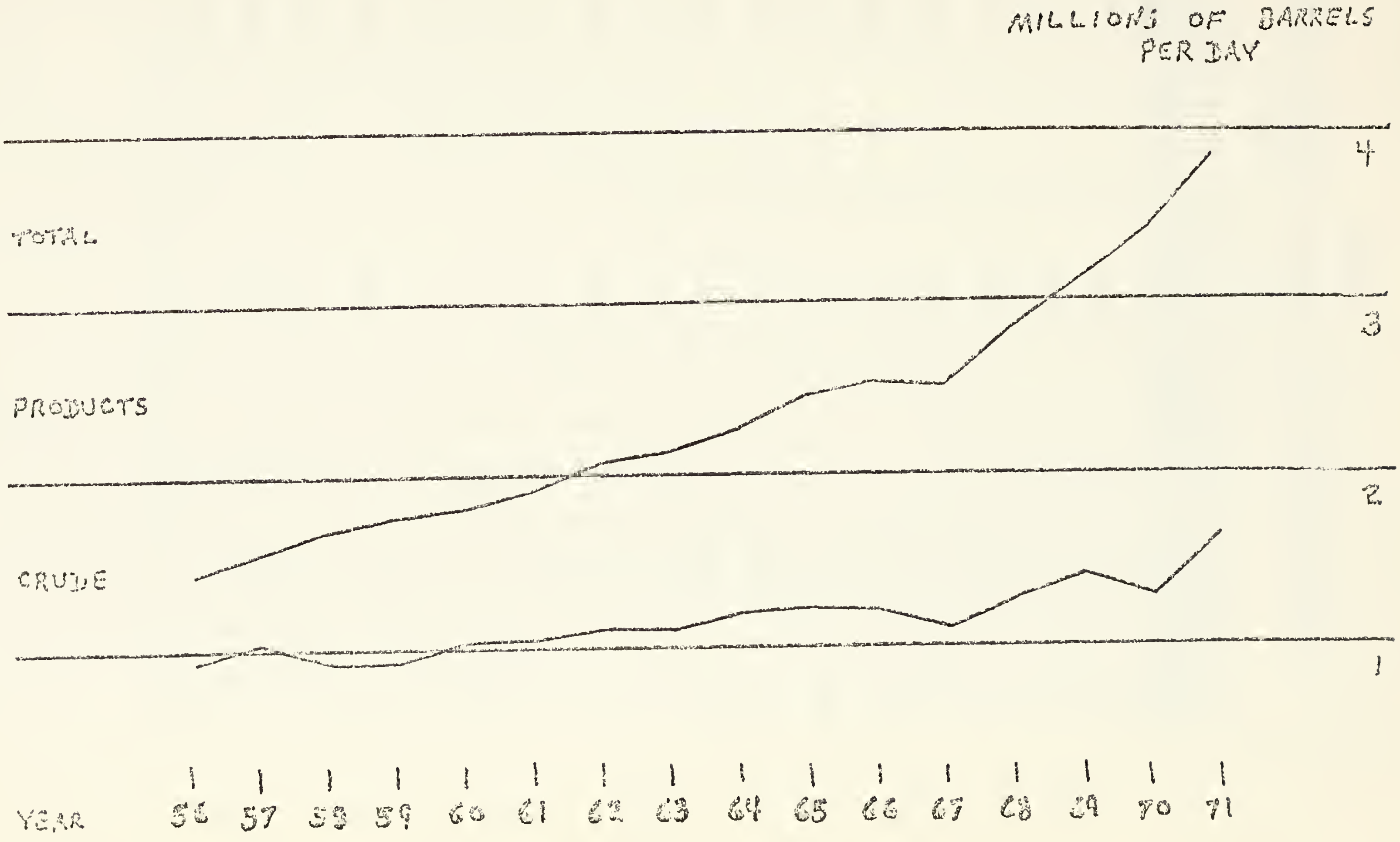

TABLE 9

UNITED STATES IMPORTS OF CRUDE OIL AND REFINED PRODUCTS IN THOUSANDS OF BARRELS 1918 - 1971[a]

Year	Crude Oil		Refined Products		Total	
	Annual	Daily	Annual	Daily	Annual	Daily
1918	37,736	103	1,227	3	38,963	106
1919	52,822	145	1,376	4	54,198	149
1920	106,175	291	2,647	7	108,822	298
1921	125,364	343	3,428	9	128,792	352
1922	127,308	349	8,665	24	135,973	373
1923	82,015	225	17,638	48	99,653	273
1924	77,775	213	16,806	46	94,581	259
1925	61,824	169	16,376	45	78,200	214
1926	60,382	165	20,938	57	81,320	222
1927	58,383	160	13,353	37	71,736	197
1928	79,767	219	11,790	32	91,557	251
1929	78,933	216	29,777	82	108,710	298
1930	62,129	170	43,489	119	105,618	289
1931	47,250	129	38,837	106	86,087	235
1932	44,682	122	29,812	82	74,494	204
1933	31,893	87	13,501	37	45,394	124
1934	35,558	97	14,936	41	50,494	138

[a] Id.

TABLE 9 - Continued

UNITED STATES IMPORTS OF CRUDE OIL AND REFINED PRODUCTS IN THOUSANDS OF BARRELS 1918 - 1971

	Crude Oil		Refined Products		Total	
Year	Annual	Daily	Annual	Daily	Annual	Daily
1935	32,239	88	20,396	56	52,635	144
1936	32,327	89	24,777	68	57,104	157
1937	27,484	75	29,673	81	57,157	156
1938	26,412	72	27,896	76	54,308	148
1939	33,095	91	25,965	71	59,060	162
1940	42,662	117	41,089	113	83,751	230
1941	50,606	139	46,536	127	97,142	266
1942	12,297	34	23,669	65	35,966	99
1943	13,833	38	49,579	136	63,412	174
1944	44,805	123	47,506	130	92,311	253
1945	74,337	204	39,282	108	113,619	312
1946	86,066	236	51,610	141	137,676	377
1947	97,532	267	61,857	169	159,389	436
1948	129,093	354	59,051	162	188,144	516
1949	153,686	421	81,873	224	235,559	645
1950	177,714	487	132,547	363	310,261	850
1951	179,073	491	129,121	354	308,194	845
1952	209,591	574	138,916	381	348,507	955
1953	236,455	648	141,044	386	377,499	1,034
1954	239,479	656	144,476	396	383,955	1,052
1955	285,421	782	170,143	466	455,564	1,248

TABLE 9 - Continued

UNITED STATES IMPORTS OF CRUDE OIL AND REFINED PRODUCTS
IN THOUSANDS OF BARRELS 1918 - 1971

	Crude Oil		Refined Products		Total	
Year	Annual	Daily	Annual	Daily	Annual	Daily
1956	341,833	937	183,758	503	525,591	1,440
1957	373,255	1,023	201,334	552	574,589	1,575
1958	348,007	953	272,582	747	620,589	1,700
1959	352,344	965	297,239	814	649,583	1,779
1960	371,575	1,018	292,536	801	664,111	1,819
1961	381,548	1,045	318,118	872	699,666	1,917
1962	411,039	1,126	348,754	955	759,793	2,081
1963	412,660	1,131	362,053	992	774,713	2,123
1964	438,643	1,202	388,093	1,063	826,736	2,265
1965	452,040	1,238	448,732	1,229	900,772	2,467
1966	447,120	1,225	492,042	1,348	939,162	2,573
1967	411,649	1,128	514,342	1,409	925,991	2,537
1968	472,323	1,294	567,046	1,554	1,039,369	2,848
1969	514,114	1,409	641,437	1,757	1,155,551	3,166
1970	483,293	1,324	764,769	2,095	1,248,062	3,419
1971	613,417	1,681	801,466	2,196	1,414,883	3,877

TABLE 10

UNITED STATES IMPORTS OF CRUDE OIL BY AREA OF PRODUCTION IN THOUSANDS OF BARRELS
1956 - 1971[a]

Year	Western Hemisphere	Africa	Middle East	All Others	Total
1956	225,007	--	103,517	13,309	341,833
1957	261,736	--	87,798	23,719	373,255
1958	199,256	--	123,091	25,732	348,007
1959	212,707	--	115,875	23,762	352,344
1960	230,229	1,451	113,175	26,720	371,575
1961	237,995	1,887	118,997	22,669	381,548
1962	267,680	9,808	109,071	24,480	411,039
1963	278,933	9,173	103,214	21,340	412,660
1964	289,012	17,743	108,841	23,047	438,643
1965	283,377	24,585	121,908	22,170	452,040
1966	289,800	31,543	107,579	18,198	447,120
1967	301,002	20,151	67,977	22, 519	411,649
1968	315,977	57,461	72,330	26,555	472,323
1969	337,847	82,380	61,616	32,271	514,114
1970	351.366	44,365	61,892	25,670	483,293
1971	378,102	68,361	124,155	42,779	613,417

[a] Id.

TABLE 11

UNITED STATES IMPORTS OF CRUDE OIL BY AREA OF PRODUCTION AS A PERCENT OF TOTAL 1956 - 1971[a]

Year	Western Hemisphere	Africa	Middle East	All Others
1956	65.8	--	30.3	3.9
1957	70.1	--	23.5	6.4
1958	57.2	--	35.4	7.4
1959	60.4	--	32.9	6.7
1960	61.9	.4	30.5	7.2
1961	62.4	.5	31.2	5.9
1962	65.1	2.4	26.5	6.0
1963	67.6	2.2	25.0	5.2
1964	65.9	4.0	24.8	5.3
1965	62.7	5.4	27.0	4.9
1966	64.8	7.0	24.1	4.1
1967	73.1	4.9	16.5	5.5
1968	66.9	12.2	15.3	5.6
1969	65.7	16.0	12.0	6.3
1970	72.7	9.2	12.8	5.3
1971	61.6	11.2	20.2	7.0

[a] Id.

TABLE 12

UNITED STATES IMPORTS OF CRUDE OIL BY COUNTRY OF PRODUCTION IN THOUSANDS OF BARRELS 1956 - 1970[a]

COUNTRY	1956	1957	1958	1959	1960
Western Hemisphere					
Bolivia	--	--	--	--	--
Brazil	--	--	268	545	--
Canada	42,739	55,131	30,426	33,730	41,349
Chile	--	--	--	--	--
Colombia	9,009	8,366	9,411	12,437	14,799
Curaca & Aruba	--	--	--	--	--
Ecuador	368	933	--	--	--
Mexico	4,666	2,441	672	112	925
Peru	609	--	192	--	--
Trinadad	566	1,111	120	--	269
Venezuela	167,050	193,758	158,167	165,883	172,887
TOTAL West. Hemis.	225,007	261,736	199,256	212,707	230,229
Africa					
Algeria	--	--	--	--	284
Angola	--	--	--	--	--
Egypt	--	--	--	--	1,167
Gabon	--	--	--	--	--
Libya	--	--	--	--	--
Nigeria	--	--	--	--	--
TOTAL Africa	--	--	--	--	1,451
Middle East					
Abu Dhabi	--	--	--	--	--
Iran	7,257	6,624	5,348	8,961	13,056
Iraq	9,650	4,477	8,972	7,667	6,363
Kuwait	50,953	51,389	68,098	59,169	47,512
Neutral Zone	3,072	2,050	12,007	15,091	16,363
Quatar	4,915	2,247	1,513	231	1,649
Saudi Arabia	27,670	21,011	27,081	24,756	28,232
Total Middle East	103,517	87,798	123,091	115,875	113,175
Other					
Borneo	--	--	4,679	3,739	--
Indonesia (Sumatra)	13,309	23,719	21,053	20,023	26,720
TOTAL Other	13,309	23,719	25,732	23,762	26,720
ANNUAL TOTAL	341,833	373,255	348,007	352,344	371,575

[a] Id.

TABLE 12 - Continued

UNITED STATES IMPORTS OF CRUDE OIL BY COUNTRY OF PRODUCTION IN THOUSANDS OF BARRELS 1956 - 1970

COUNTRY	1961	1962	1963	1964	1965
Western Hemisphere	-				
Bolivia	--	--	--	--	--
Brazil	1,773	1,277	2,052	--	--
Canada	66,614	85,152	90,394	101,607	107,762
Chile	--	--	--	--	--
Colombia	10,050	8,614	8,293	9,606	15,211
Curacao & Aruba	--	--	--	--	--
Ecuador	--	--	--	--	--
Mexico	3,655	3,644	3,657	3,577	2,552
Peru	--	--	--	--	--
Trinadad	152	--	--	--	--
Venezuela	155,751	168,993	174,537	174,222	157,852
TOTAL West. Hemisphere	237,995	267,680	278,933	289,012	283,377
Africa					
Algeria	--	1,543	380	2,249	3,256
Angola	--	--	--	--	--
Egypt	1887	1,543	1,772	1,077	881
Gabon	--	6,722	7,021	--	--
Libya	--	--	--	14,417	15,152
Nigeria	--	--	--	--	5,296
TOTAL Africa	1,887	9,808	9,173	17,743	24,585
Middle East					
Abu Dhabi	--	--	--	1,112	5,035
Iran	21,970	17,735	22,717	24,143	23,633
Iraq	7,362	856	321	--	5,695
Kuwait	44,311	40,749	29,680	23,263	20,208
Neutral Zone	19,278	15,837	15,855	17,565	9,756
Quatar	3,575	9,535	5,835	7,294	4,346
Saudi Arabia	22,501	24,359	28,806	35,464	48,235
TOTAL Middle East	118,997	109,071	103,214	108,841	116,908
Other					
Borneo	--	--	--	--	--
Indonesia (Sumatra)	22,669	24,480	21,340	23,047	22,170
TOTAL Other	22,669	24,480	21,340	23,047	22,170
ANNUAL TOTAL	381,548	411,039	412,660	438,643	452,040

TABLE 12 - Continued

UNITED STATES IMPORTS OF CRUDE OIL BY COUNTRY OF PRODUCTION IN THOUSANDS OF BARRELS 1956 - 1970

COUNTRY	1966	1967	1968	1969	1970
Western Hemisphere					
Bolivia	1,237	7,016	6,866	5,596	534
Brazil	--	--	--	--	--
Canada	126,712	150,409	169,418	203,298	245,258
Chile	--	633	1,975	1,464	--
Colombia	14,424	11,855	11,981	15,551	7,313
Curacao & Aruba	--	--	--	--	--
Ecuador	--	--	--	--	--
Mexico	--	--	--	--	--
Peru	--	--	--	216	--
Trinadad	--	--	--	--	265
Venezuela	147,427	131,089	125,737	111,722	97,996
TOTAL West. Hemisphere	289,800	301,002	315,977	337,847	351,366
Africa					
Algeria	1,400	1,447	1,944	358	2,093
Angola	--	--	--	424	--
Egypt	852	1,318	10,795	14,778	7,626
Gabon	--	661	--	--	--
Libya	25,177	15,293	41,591	48,862	17,156
Nigeria	4,114	1,432	3,131	17,958	17,490
TOTAL Africa	31,543	20,151	57,461	82,380	44,365
Middle East					
Abu Dhabi	4,781	1,936	5,605	5,051	23,047
Iran	33,833	23,781	21,154	15,306	12,184
Iraq	9,447	1,716	--	--	--
Kuwait	9,543	6,859	15,863	12,539	12,123
Neutral Zone	7,028	4,006	10,749	15,864	--
Quatar	176	--	--	191	--
Saudi Arabia	45,771	29,679	18,959	12,665	14,538
TOTAL Middle East	110,579	67,977	72,330	61,616	61,892
Other					
Borneo	--	--	--	--	--
Indonesia (Sumatra)	18,198	22,519	26,555	32,271	25,670
TOTAL Other	18,198	22,519	26,555	32,271	25,670
ANNUAL TOTAL	447,120	411,649	472,323	514,114	483,293

TABLE 13

UNITED STATES IMPORTS OF CRUDE OIL AND REFINED PRODUCTS BY COUNTRY OF PRODUCTION IN THOUSANDS BBLS PER DAY AND A PERCENT OF TOTAL 1971

COUNTRY	Crude Oil		Residual Fuel Oil		All Other Products		Total	
	1000 Bbls Daily	% Total	1000 Bbls Daily	% Total	1000 Bbls Daily	% Total	1000 Bbls Daily	% Total
Canada	721.4	42.9	29.2	1.9	107.4	15.9	858.0	22.1
Mexico	--	--	4.3	0.3	23.5	3.5	27.8	0.7
Caribbean								
Colombia	8.7	0.5	16.6	1.1	0.5	0.1	25.8	0.7
N.W.I.	--	--	302.9	19.9	113.8	16.8	416.7	10.7
Trinidad & Tobago	--	--	125.4	8.3	50.4	7.4	175.8	4.5
Venezuela	302.9	18.0	562.2	37.0	133.1	19.7	998.2	25.8
SUBTOTAL	311.6	18.5	1007.1	66.3	297.8	44.0	1616.5	41.7
Other Western Hemisphere								
Argentina	--	--	0.3	--	--	--	0.3	--
Bahama Is.	--	--	125.2	8.2	24.3	3.6	149.5	3.9
Bolivia	2.2	0.2	--	--	0.2	--	2.4	0.1
Brazil	--	--	3.1	0.2	--	--	3.1	0.1
Chile	0.7	--	--	--	--	--	0.7	--
Leeward & Windward	--	--	1.8	0.1	0.4	--	2.2	--
Panama	--	--	1.4	0.1	4.8	0.7	6.2	0.2
Puerto Rico	--	--	--	--	95.3	14.1	95.3	2.4
Virgin Islands	--	--	210.7	13.9	59.3	8.8	270.0	7.0
SUBTOTAL	2.9	0.2	342.5	22.5	184.3	27.2	529.7	13.7
TOTAL WESTERN HEMISPHERE	1035.9	61.6	1383.1	91.0	613.0	90.6	3032.0	78.2

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[a] Id.

TABLE 13 - Continued

UNITED STATES IMPORTS OF CRUDE OIL AND REFINED PRODUCTS BY COUNTRY OF PRODUCTION IN THOUSANDS BBLS. PER DAY AND A PERCENT OF TOTAL 1971

COUNTRY	Crude Oil		Residual Fuel Oil		All Other Products		Total	
	1000 Bbls Daily	% Total	1000 Bbls Daily	% Total	1000 Bbls Daily	% Total	1000 Bbls Daily	% Total
Non-Communist Europe								
Belgium--Luxembourg	--	--	5.8	0.4	0.9	0.1	6.7	0.2
France	--	--	5.5	0.4	0.1	--	5.6	0.1
Germany, West	--	--	--	--	0.2	--	0.2	--
Italy	--	--	61.4	4.1	14.0	2.2	75.4	2.0
Netherlands	--	--	19.7	1.3	0.6	0.1	20.3	0.5
Norway	--	--	1.0	--	--	--	1.0	--
Spain	--	--	10.5	0.7	1.5	0.2	12.0	0.3
United Kingdom	--	--	8.4	0.5	0.8	0.1	9.2	0.3
SUBTOTAL	--	--	112.3	7.4	18.1	2.7	130.4	3.4
North Africa								
Algeria	12.8	0.8	0.9	0.1	--	--	13.7	0.4
Egypt	19.0	1.1	--	--	--	--	19.0	0.5
Libya	53.2	3.2	0.4	--	0.4	0.1	54.0	1.4
Tunisia	3.3	0.2	--	--	0.2	--	3.5	--
SUBTOTAL	88.3	5.3	1.3	0.1	0.6	0.1	90.2	2.3
West Africa								
Angola	3.6	0.2	--	--	--	--	3.6	--
Gabon	--	--	0.3	--	--	--	0.3	--
Ivory Coast	--	--	0.4	--	--	--	0.4	--
Nigeria	95.4	5.7	3.8	0.3	0.2	--	99.4	2.7
SUBTOTAL	99.0	5.9	4.5	0.3	0.2	--	103.7	2.7

TABLE 13 - Continued

UNITED STATES IMPORTS OF CRUDE OIL AND REFINED PRODUCTS BY COUNTRY OF PRODUCTION IN THOUSANDS BBLS. PER DAY AND A PERCENT OF TOTAL
1971

COUNTRY	Crude Oil		Residual Fuel Oil		All Other Products		Total	
	1000 Bbls Daily	% Total	1000 Bbls Daily	% Total	1000 Bbls Daily	% Total	1000 Bbls Daily	% Total
Middle East								
Abu Dhabi	79.5	4.7	--	--	--	--	79.5	2.0
Bahrain	--	--	2.2	0.2	8.2	1.2	10.4	0.3
Iran	105.7	6.3	3.0	0.2	6.1	0.9	114.8	3.0
Iraq	10.8	0.7	--	--	--	--	10.8	0.3
Kuwait	29.2	1.7	0.5	--	6.9	1.0	36.6	1.0
Saudi Arabia	115.0	6.8	10.5	0.7	5.0	0.8	130.5	3.4
South Yemen	--	--	--	--	1.6	0.2	1.6	--
SUBTOTAL	340.2	20.2	16.2	1.1	27.8	4.1	384.2	10.0
Japan	--	--	--	--	2.8	0.4	2.8	--
Far East								
Australia	7.0	0.4	--	--	--	--	7.0	0.2
Indonesia	110.2	6.6	--	--	--	--	110.2	2.8
Malaysia	--	--	--	--	8.9	1.3	8.9	0.2
Pakistan	--	--	0.2	--	--	--	0.2	--
SUBTOTAL	117.2	7.0	0.2	--	8.9	1.3	126.3	3.2
Communist								
Romania	--	--	0.8	0.1	5.4	0.8	6.2	0.2
U.S.S.R.	--	--	0.6	--	--	--	0.6	00
SUBTOTAL	--	--	1.4	0.1	5.4	0.8	6.8	0.2
TOTAL EASTERN HEMISPHERE	644.7	38.4	135.9	9.0	63.8	9.4	844.4	21.8
GRAND TOTAL	1680.6	100.0	1519.0	100.0	676.8	100.0	3876.4	100.0

TABLE 14

UNITED STATES IMPORTS OF CRUDE OIL BY P.A.D. DISTRICT OF RECEIPT IN THOUSANDS OF BARRELS 1956 - 1971[a]

Year	P.A.D. I	P.A.D. II	P.A.D. III	P.A.D. IV	P.A.D. V
1956	244,453	19,904	11,917	70	65,489
1957	247,395	22,296	8,729	86	94,749
1958	238,769	25,328	16,242	13	67,655
1959	235,259	21,279	10,184	15	85,607
1960	244,196	23,265	2,939	20	101,155
1961	236,905	30,971	2,354	30	111,288
1962	244,291	34,646	2,489	682	128,987
1963	248,199	34,666	1,698	3,528	124,569
1964	252,527	37,801	1,835	4,409	142,071
1965	258,361	41,264	--	4,807	147,608
1966	259,499	48,114	449	4,954	134,104
1967	216,920	56,408	672	6,648	131,001
1968	263,866	78,365	641	10,058	119,393
1969	269,007	88,434	--	12,714	143,959
1970	211,403	115,613	--	17,573	138,704
1971	252,088	137,064	20,449	16,869	186,947

[a] Id.

TABLE 14 - Continued

UNITED STATES IMPORTS OF CRUDE OIL BY P.A.D. DISTRICT OF RECEIPT IN THOUSANDS OF BARRELS 1956 - 1971

Year	Total Imported Crude Oil	P.A.D. I as a % of Total	P.A.D. V as a % of Total
1956	341,833	71.5	19.2
1957	373,255	66.3	25.4
1958	348,007	68.6	19.4
1959	352,344	66.8	24.3
1960	371,575	65.7	27.2
1961	381,548	62.1	29.3
1962	411,039	59.4	31.4
1963	412,660	60.2	30.2
1964	438,643	57.6	32.4
1965	452,040	57.2	32.7
1966	447,120	58.0	30.0
1967	411,649	52.7	31.8
1968	472,323	55.9	25.3
1969	514,114	52.3	28.0
1970	483,293	43.7	28.7
1971	613,417	41.1	30.5

TABLE 15

UNITED STATES IMPORTS OF UNFINISHED OILS AND REFINED PRODUCTS BY P. A. D. DISTRICT OF RECEIPT IN THOUSANDS OF BARRELS 1956 - 1971[a]

Year	P.A.D. I		P.A.D. II		P.A.D. III	
	Unfinished Oils	Refined Products	Unfinished Oils	Refined Products	Unfinished Oils	Refined Products
1956						
1957						
1958						
1959	16,628	264,347	587	606	2,148	4,861
1960	9,534	248,388	520	1,019	994	16,788
1961	18,045	256,484	1,184	1,324	145	15,258
1962	22,297	279,475	360	1,746	1,616	15,101
1963	21,779	299,530	476	2,193	2,102	14,952
1964	21,151	321,994	478	3,552	1,011	13,117
1965	23,260	369,760	213	5,739	377	18,073
1966	26,743	410,435	43	7,276	15	13,826
1967	23,222	434,265	20	7,171	276	9,873
1968	21,987	489,628	1	7,573	109	10,618
1969	28,975	543,947	51	8,245	1,034	15,087
1970	30,221	651,123		20,022	913	21,191
1971	30,651	664,156		23,594	2,217	22,093

[a] Id.

TABLE 15 - Continued

UNITED STATES IMPORTS OF UNFINISHED OILS AND REFINED PRODUCTS BY P. A. D. DISTRICT OF RECEIPT IN THOUSANDS OF BARRELS 1956 - 1971

Year	P.A.D. IV		P.A.D. V	
	Unfinished Oils	Refined Products	Unfinished Oils	Refined Products
1956				
1957				
1958				
1959	--	31	3,709	4,322
1960	--	121	5,430	9,742
1961	--	180	5,974	19,524
1962	--	154	8,243	19,762
1963	--	39	7,345	13,637
1964	--	159	9,947	16,684
1965	--	727	9,856	20,727
1966	--	971	8,435	24,298
1967	--	879	11,707	26,929
1968	--	2,253	7,253	27,624
1969	--	2,979	8,706	32,413
1970	--	3,192	8,127	29,980
1971	--	7,787	12,325	38,643

TABLE 15 - Continued

UNITED STATES IMPORTS OF UNFINISHED OILS AND REFINED PRODUCTS BY P. A. D. DISTRICT OF RECEIPT IN THOUSANDS OF BARRELS 1956 - 1971

Year	TOTALS		P.A.D. I as a Percent of Total
	Unfinished Oils	Refined Products	
1956		183,758	
1957		201,334	
1958		272,582	
1959	23,072	274,167	94.5
1960	16,478	276,058	88.2
1961	25,348	292,770	86.3
1962	32,516	316,238	86.5
1963	31,702	330,351	88.7
1964	32,587	355,506	88.4
1965	33,706	415,026	87.6
1966	35,236	456,806	88.9
1967	35,225	479,117	89.0
1968	29,350	537,696	90.2
1969	38,766	602,671	89.3
1970	39,261	725,508	89.1
1971	45,193	756,273	86.7

TABLE 16

UNITED STATES IMPORTS OF RESIDUAL AND DISTILLATE FUEL OIL BY P.A.D. DISTRICT OF RECEIPT IN THOUSANDS OF BARRELS 1956 - 1971[a]

Year	P.A.D. I		P.A.D. II		P.A.D. III	
	Residual Fuel Oil	Distillate Fuel Oil	Residual Fuel Oil	Distillate Fuel Oil	Residual Fuel Oil	Distillate Fuel Oil
1956						
1957						
1958						
1959	219,341	17,283	230	13	2,981	360
1960	211,788	11,365	59	12	14,416	1,298
1961	214,453	15,533	284	24	12,320	1,654
1962	237,565	9,811	610	31	11,775	1,892
1963	252,785	7,787	800	63	12,327	1,250
1964	274,306	10,559	804	64	11,204	1,119
1965	318,634	11,041	1,188	17	14,598	1,811
1966	357,907	12,548	860	107	11,708	967
1967	383,260	16,851	587	224	7,475	891
1968	394,528	45,502	573	360	8,271	1,290
1969	440,983	47,720	627	1,264	12,167	937
1970	536,968	49,333	4,207	2,223	11,029	1,192
1971	531,313	63,977	3,990	897	11,407	1,344

[a] Id.

TABLE 16 - Continued

UNITED STATES IMPORTS OF RESIDUAL AND DISTILLATE FUEL OIL BY P.A.D.DISTRICT OF RECEIPT IN THOUSANDS OF BARRELS 1956 - 1971

Year	P.A.D. IV		P.A.D. V		TOTALS	
	Residual Fuel Oil	Distillate Fuel Oil	Residual Fuel Oil	Distillate Fuel Oil	Residual Fuel Oil	Distillate Fuel Oil
1956					162,869	5,159
1957					173,229	8,566
1958					182,306	14,892
1959	1	2	18	0	222,571	17,658
1960	0	96	6,945	0	233,208	12,771
1961	1	142	16,210	24	243,268	17,377
1962	47	92	14,317	5	264,314	11,831
1963	26	1	6,815	9	272,753	9,110
1964	45	0	9,412	43	295,771	11,785
1965	43	0	10,724	133	345,187	13,002
1966	55	0	6,265	223	376,795	13,845
1967	60	0	4,557	526	395,939	18,492
1968	54	0	6,502	996	409,928	48,148
1969	78	0	7,756	962	461,611	50,883
1970	52	0	5,589	1,078	557,845	53,826
1971	42	0	7,677	1,645	554,429	67,863

TABLE 16 - Continued

UNITED STATES IMPORTS OF RESIDUAL AND DISTILLATE FUEL OIL BY P.A.D. DISTRICT OF RECEIPT IN THOUSANDS OF BARRELS 1956 - 1971

Year	TOTAL IMPORTS	As a % of TOTAL REFINED IMPORTS	
	Refined Products	Residual Fuel Oil	Distillate Fuel Oil
1956	183,758	88.6	2.8
1957	201,334	86.0	4.2
1958	272,582	66.8	5.4
1959	274,116	81.2	6.4
1960	276,058	84.5	4.6
1961	292,770	83.1	5.9
1962	316,238	83.6	3.7
1963	330,351	82.6	2.8
1964	355,506	83.2	3.3
1965	415,026	83.2	3.1
1966	456,806	82.5	3.0
1967	479,117	82.6	3.9
1968	537,696	76.2	9.0
1969	602,671	76.6	8.4
1970	725,508	76.9	7.4
1971	756,273	73.3	9.0

TABLE 17

UNITED STATES IMPORTS OF REFINED PRODUCTS BY P.A.D. DISTRICT OF RECEIPT IN THOUSANDS OF BARRELS - 1971[a]

						Jet Fuel	
Received by District 1	Motor Gasol.	Spec. Naph.	Kero-sine	Dist. Fuel	Resid. Fuel	Naph. Type	Kero. Type
Algeria	--	--	--	--	870	--	--
Argentina	--	--	--	--	120	--	--
Bahamas	--	--	--	336	47,843	--	3,481
Bahrain	--	--	--	742	36	--	86
Belgium	--	--	--	--	1,715	--	255
Brazil	--	--	--	--	1,185	--	--
Brit. W. Ind.	--	--	--	--	142	--	--
Canada	127	572	40	212	11,604	--	7
Columbia	--	--	--	280	6,224	--	--
France	--	--	--	--	1,041	--	--
Gabon	--	--	--	--	111	--	--
Indonesia	--	--	--	--	344	--	--
Iran	--	--	--	--	--	--	563
Italy	--	--	--	1,806	25,533	--	1,186
Ivory Coast	--	--	--	--	136	--	--
Japan	--	--	--	--	--	--	--
Kuwait	--	111	--	--	--	--	--
Libya	--	--	--	168	540	--	--
Mexico	--	--	--	--	1,411	--	--
Netherlands	--	--	--	--	6,674	--	111
N. Antilles	--	94	--	9,540	108,666	--	11,371
Nigeria	--	--	--	72	1,484	--	--
Panama	--	142	--	305	307	--	610
Norway	--	--	--	--	367	--	--
Puerto Rico	20,442	--	--	8,369	--	--	--
Rumania	--	--	--	1,611	243	--	--
Saudi Arabia	--	--	--	--	1,326	--	--
Sierra Leone	--	--	--	--	--	--	--
Spain	147	--	--	210	3,826	--	--
Sumatra	--	--	--	--	--	--	--
Sweden	--	--	--	--	--	--	--
S/Yemen	--	--	--	--	--	--	602
Trinidad	--	--	--	3,992	46,791	2,212	5,263
Tunisia	--	--	--	100	--	--	--
United Kingdom	--	--	--	150	3,190	--	153
Venezuela	--	675	21	20,158	209,979	1,887	4,721
Virgin Islands	709	--	126	5,322	77,061	4,450	--
TOTAL	21,425	1,594	187	53,373	558,769	8,549	28,409

[a] Id.

TABLE 17 - Continued

UNITED STATES IMPORTS OF REFINED PRODUCTS
BY P.A.D. DISTRICT OF RECEIPT
IN THOUSANDS OF BARRELS - 1971

Received by District 1	Asphalt	Plant Cond.	Unfin. Oils	Lube Oils	Wax	Pro-pane	Bu-tane	Petro Feed Stocks	Total
Algeria	--	--	--	--	--	--	--	--	870
Argentina	--	--	--	--	--	--	--	--	120
Bahamas	--	--	260	--	--	--	--	--	51,920
Bahrain	--	--	--	--	--	--	--	--	864
Belgium	--	--	--	--	--	--	--	--	1,970
Brazil	--	--	--	--	--	--	--	--	1,185
Brit.W.Ind.	--	--	--	--	--	--	--	--	142
Canada	345	538	--	2	2	1,964	97	--	15,510
Columbia	--	--	--	--	--	--	--	--	6,504
France	--	--	--	1	--	--	--	--	1,042
Gabon	--	--	--	--	--	--	--	--	111
Indonesia	--	--	--	--	--	--	--	--	344
Iran	--	--	157	--	--	157	--	--	877
Italy	--	--	--	1	--	--	--	--	28,526
Ivory Coast	--	--	--	--	--	--	--	--	136
Japan	--	--	--	1	--	--	--	--	1
Kuwait	--	--	619	--	--	--	--	--	730
Libya	--	--	--	--	--	--	--	--	708
Mexico	--	--	8,569	--	--	--	--	--	9,980
Netherlands	32	--	--	1	--	--	--	--	6,818
N. Antilles	3,147	--	2,060	--	--	26	154	--	135,058
Nigeria	--	--	--	--	--	--	--	--	1,556
Norway	--	--	--	--	--	--	--	--	367
Panama	--	--	--	--	--	--	--	--	1,364
Puerto Rico	--	--	4,141	--	--	--	--	--	32,952
Rumania	--	--	--	--	--	--	--	--	1,854
Saudi Arabia	--	--	433	--	--	--	--	--	1,759
Sierra Leone	--	--	--	--	--	2	--	--	2
Spain	--	--	--	--	--	--	--	--	4,183
Sumatra	--	--	190	--	--	--	--	--	190
Sweden	--	--	--	--	--	3	--	--	3
S. Yemen	--	--	--	--	--	--	--	--	602
Trinidad	7	--	124	--	--	--	--	--	58,389
Tunisia	--	--	--	--	--	--	--	--	100
United King.	--	--	--	--	--	--	--	--	3,493
Venezuela	2,855	--	5,104	--	--	375	1,992	--	247,767
Virgin Isls.	--	--	8,994	--	--	--	5	--	96,667
TOTAL	6,386	538	30,651	6	2	2,527	2,248	--	714,664

TABLE 17 - Continued

UNITED STATES IMPORTS OF REFINED PRODUCTS
BY P.A.D. DISTRICT OF RECEIPT
IN THOUSANDS OF BARRELS - 1971

						Jet Fuel	
Received by District 2	Motor Gaso.	Spec. Naph.	Kero-sine	Dist. Fuel	Resid. Fuel	Naph. Type	Kero. Type
Bahamas	--	--	--	--	--	--	90
Canada	--	61	2	258	807	--	38
France	--	--	--	--	737	--	--
Gabon	--	--	--	--	--	--	--
Italy	--	--	--	--	118	--	--
Libya	--	--	--	--	914	--	--
Mexico	--	--	--	--	--	--	--
N. Antilles	--	--	--	--	--	--	2,606
New Guinea	--	--	--	--	--	--	--
Nigeria	--	--	--	--	913	--	--
Trinidad	--	--	--	--	325	--	264
Venezuela	--	--	--	--	--	--	45
Virgin Isle.	--	--	--	--	139	--	--
TOTAL	--	61	2	258	3,953	--	3,043

Received by District 3							
Bahamas	--	145	--	68	--	--	213
Canada	--	--	--	--	--	--	--
France	--	--	--	--	--	--	--
Italy	--	--	--	--	2	--	--
Libya	--	--	--	--	--	--	--
Mexico	--	--	--	--	--	--	--
Netherlands	--	--	--	--	--	--	--
N. Antilles	--	--	--	544	2,979	--	416
Panama	--	--	--	--	29	--	2
Puerto Rico	--	--	--	--	--	--	--
Saudi Arabia	--	--	--	--	64	--	--
Trinidad	--	25	--	297	1,183	--	639
Venezuela	--	--	--	170	2,296	--	1,689
Virgin Isle.	--	--	--	--	--	--	--
TOTAL	--	170	--	1,079	6,553	--	2,959

Received by District 4							
Canada	--	11	--	--	41	--	--
Panama	--	2	--	--	--	--	--
TOTAL	--	13	--	--	41	--	--

TABLE 17 - Continued

UNITED STATES IMPORTS OF REFINED PRODUCTS
BY P.A.D.-DISTRICT OF RECEIPT
IN THOUSANDS OF BARRELS - 1971

Received by District 2	Asphalt	Plant Cond.	Unfin. Oils	Lube Oils	Wax	Pro-Pane	Bu-tane	Petro Feed Stocks	Total
Bahamas	--	--	--	--	--	--	--	--	90
Canada	155	4,580	--	2	--	6,187	4,666	--	16,756
France	--	--	--	--	--	--	--	--	737
Gabon	--	--	--	--	--	--	1	--	1
Italy	--	--	--	--	--	--	--	--	118
Libya	--	--	--	--	--	--	--	--	914
Mexico	--	--	--	--	--	4	--	--	4
N.Antilles	4	--	--	--	--	--	--	--	2,610
New Guinea	--	--	--	--	--	1	--	--	1
Nigeria	--	--	--	--	--	--	--	--	913
Trinidad	--	--	--	--	--	--	--	--	589
Venezuela	1	--	--	--	--	--	--	--	46
Virgin Is.	--	--	--	--	--	--	--	--	139
TOTAL	160	4,580	--	2	--	6,192	4,667	--	22,918
Received by District 3									
Bahamas	--	--	--	--	--	--	--	--	426
Canada	--	--	--	--	12	--	--	--	12
France	--	--	--	--	--	--	--	35	35
Italy	--	--	--	--	--	--	--	--	2
Libya	--	--	--	--	--	1	--	--	1
Mexico	--	--	--	--	2	--	--	--	2
Netherlands	--	--	--	--	12	--	--	--	12
N. Antilles	--	--	1,029	--	13	--	--	288	5,269
Panama	--	--	--	--	--	--	--	--	31
Puerto Rico	--	--	153	--	--	--	--	1,680	1,833
Saudi Arabia	--	--	--	--	--	--	--	--	64
Trinidad	--	--	88	--	--	--	--	2,185	4,417
Venezuela	670	--	803	--	52	--	793	--	6,473
Virgin Is.	--	--	144	--	--	--	--	921	1,065
TOTAL	670	--	2,217	--	91	1	793	5,109	19,642
Received by District 4									
Canada	--	4,672	--	--	--	1,680	1,380	--	7,784
Panama	--	--	--	--	--	--	--	--	2
TOTAL	--	4,672	--	--	--	1,680	1,380	--	7,786

TABLE 17 - Continued

UNITED STATES IMPORTS OF REFINED PRODUCTS
BY P.A.D. DISTRICT OF RECEIPT
IN THOUSANDS OF BARRELS - 1971

Received by District 1	Motor Gaso.	Spec. Naph.	Kero-sine	Dist. Fuel	Resid. Fuel	Jet Fuel Naph. Type	Jet Fuel Kero. Type
Arabia	--	--	--	--	--	--	--
Bahamas	--	--	--	--	--	--	675
Bahrain	--	--	--	--	971	--	2,570
Canada	76	--	--	--	53	--	--
Guam	--	--	--	--	147	513	--
Indonesia	--	--	--	--	--	--	--
Iran	--	--	--	--	--	--	1,028
Japan	--	--	--	91	--	--	931
Kuwait	--	--	--	--	--	--	--
Malaysia	--	--	--	--	--	--	2,659
Mexico	--	--	--	--	14	--	--
Netherlands	--	--	--	--	--	--	1
N. Antilles	117	--	--	885	4,767	150	4,859
Panama	--	--	--	--	--	--	294
Saudi Arabia	--	--	--	76	1,825	--	89
Trinidad	--	--	--	21	191	582	2,063
Venezuela	40	--	--	--	241	256	2,942
Virgin Isle.	--	--	--	--	--	1,042	--
West Germany	--	--	--	--	--	--	--
TOTAL	233	--	--	1,073	8,209	2,543	18,111

TABLE 17 - Continued

UNITED STATES IMPORTS OF REFINED PRODUCTS
BY P.A.D. DISTRICT OF RECEIPT
IN THOUSANDS OF BARRELS - 1971

Received by District 5	Asphalt	Plant Cond.	Unfin. Oils	Lube Oils	Wax	Pro-Pane	Bu-tane	Petro Feed Stocks	Total
Arabia	--	--	--	--	--	--	--	--	23
Bahamas	--	--	1,626	--	--	--	--	--	2,301
Bahrain	--	--	181	--	--	--	--	--	3,722
Canada	--	3,498	103	--	--	1,133	4,603	--	9,466
Guam	--	--	---	--	--	--	--	--	660
Indonesia	--	--	---	--	--	--	8	--	8
Iran	--	--	337	--	--	--	--	--	1,365
Japan	--	--	--	2	--	--	--	--	1,024
Kuwait	--	--	1,792	--	--	--	--	--	1,792
Malaysia	--	--	597	--	--	--	--	--	3,256
Mexico	--	--	--	--	--	24	--	--	38
Netherlands	--	--	--	--	--	--	--	--	1
N. Antilles	--	--	2,902	--	--	26	--	--	13,706
Panama	--	--	336	--	--	--	--	--	630
Saudi Arabia	--	--	490	--	--	--	257	--	2,737
Trinidad	--	--	50	--	--	--	--	--	2,907
Venezuela	--	33	3,350	--	--	23	--	--	6,885
Virgin Isle.	--	--	561	--	--	--	--	--	1,603
W. Germany.	--	--	--	--	--	--	70	--	70
TOTAL	--	3,531	12,325	2	--	1,206	4,961	--	52,194

FIG 10
PROJECTED
DOMESTIC AND FOREIGN
PETROLEUM IN
UNITED STATES
SUPPLY

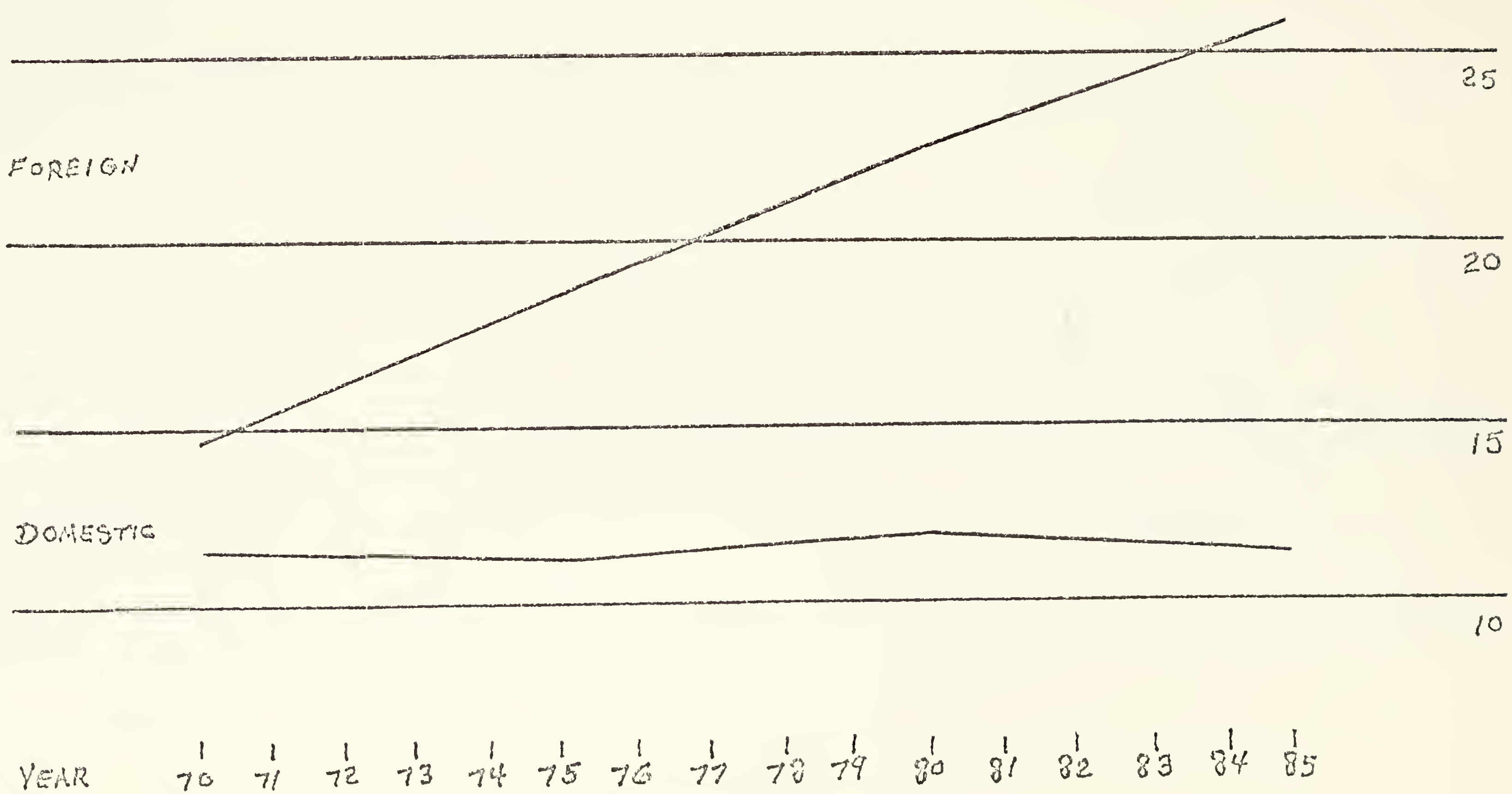


FIG 11
PROJECTED
DOMESTIC AND FOREIGN
OIL IN
UNITED STATES
SUPPLY

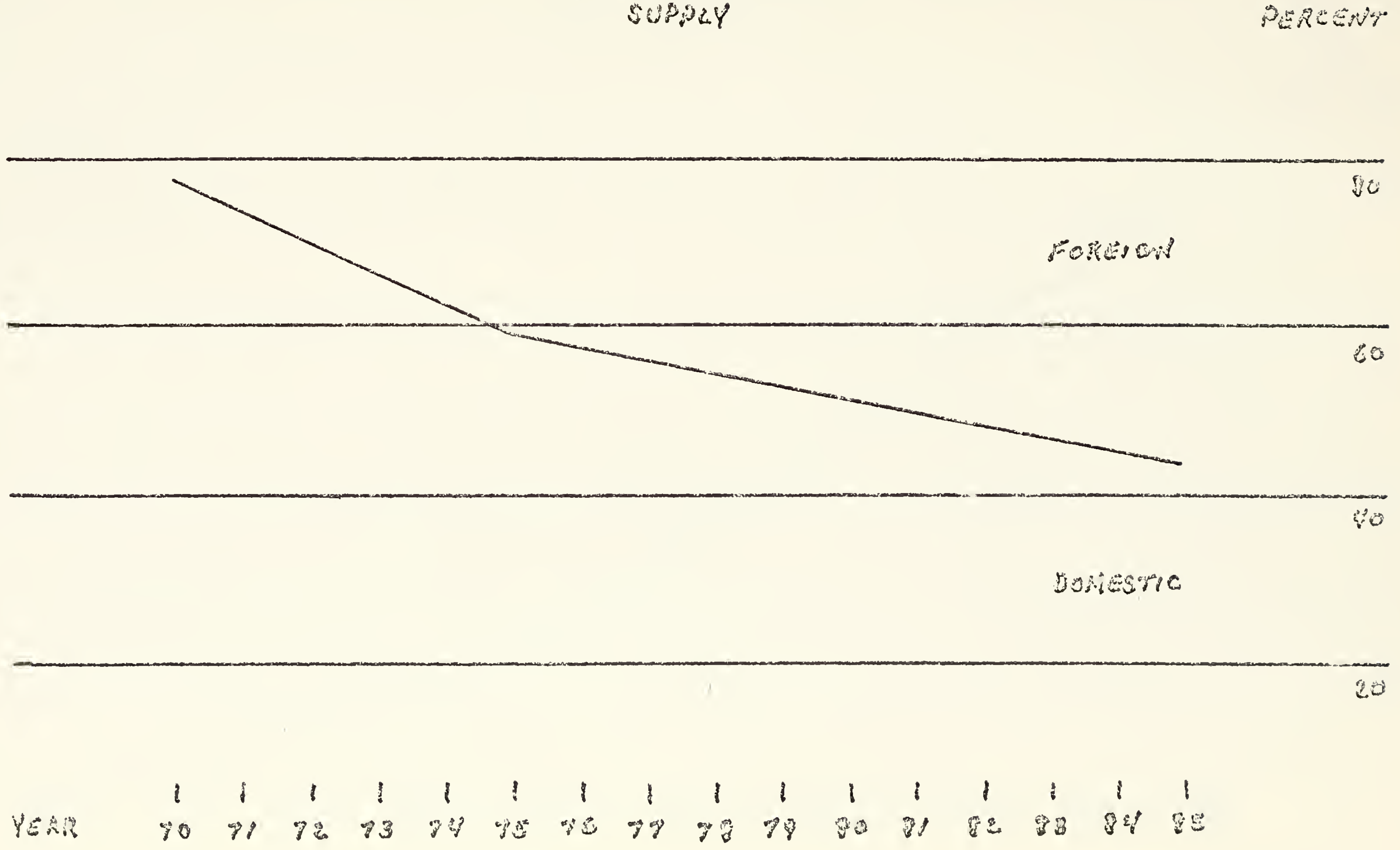


FIG 12
PROJECTED
TAXES AND ROYALTIES PAYABLE TO OVERSEAS PRODUCING NATIONS ON UNITED STATES PETROLEUM IMPORTS

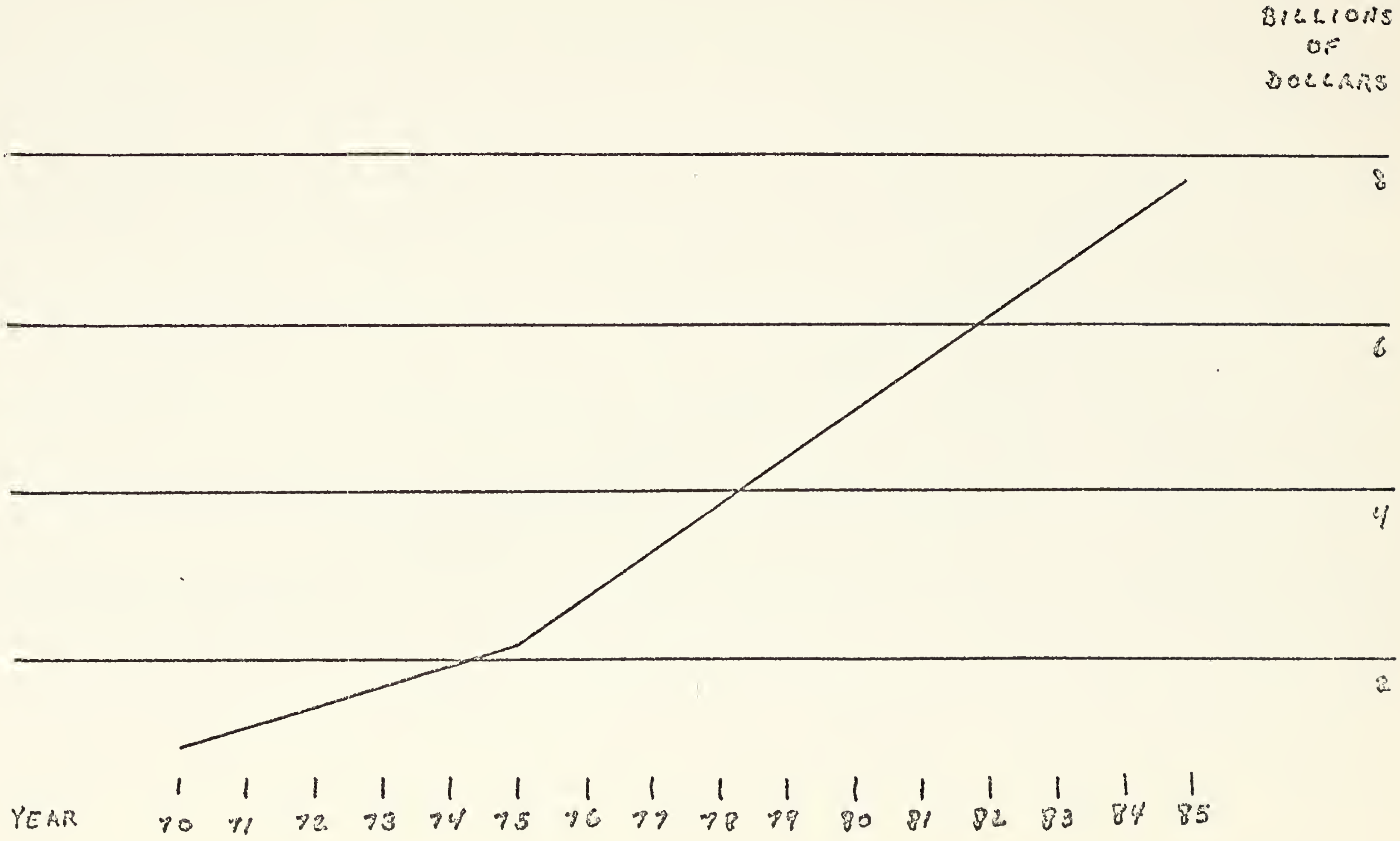


FIG 13
PROJECTED DOMESTIC
CASH OUT FLOW
DUE TO OIL IMPORTS

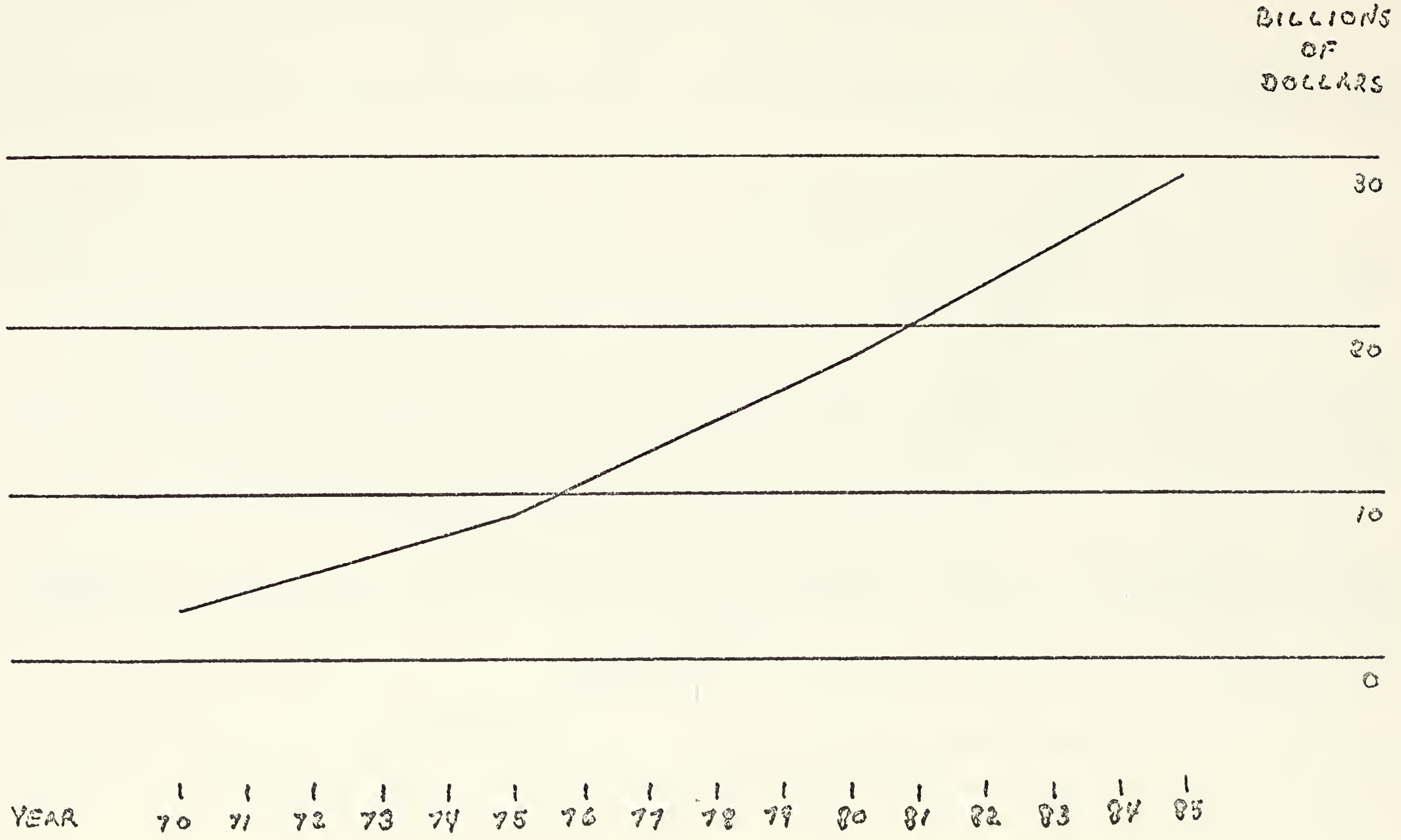
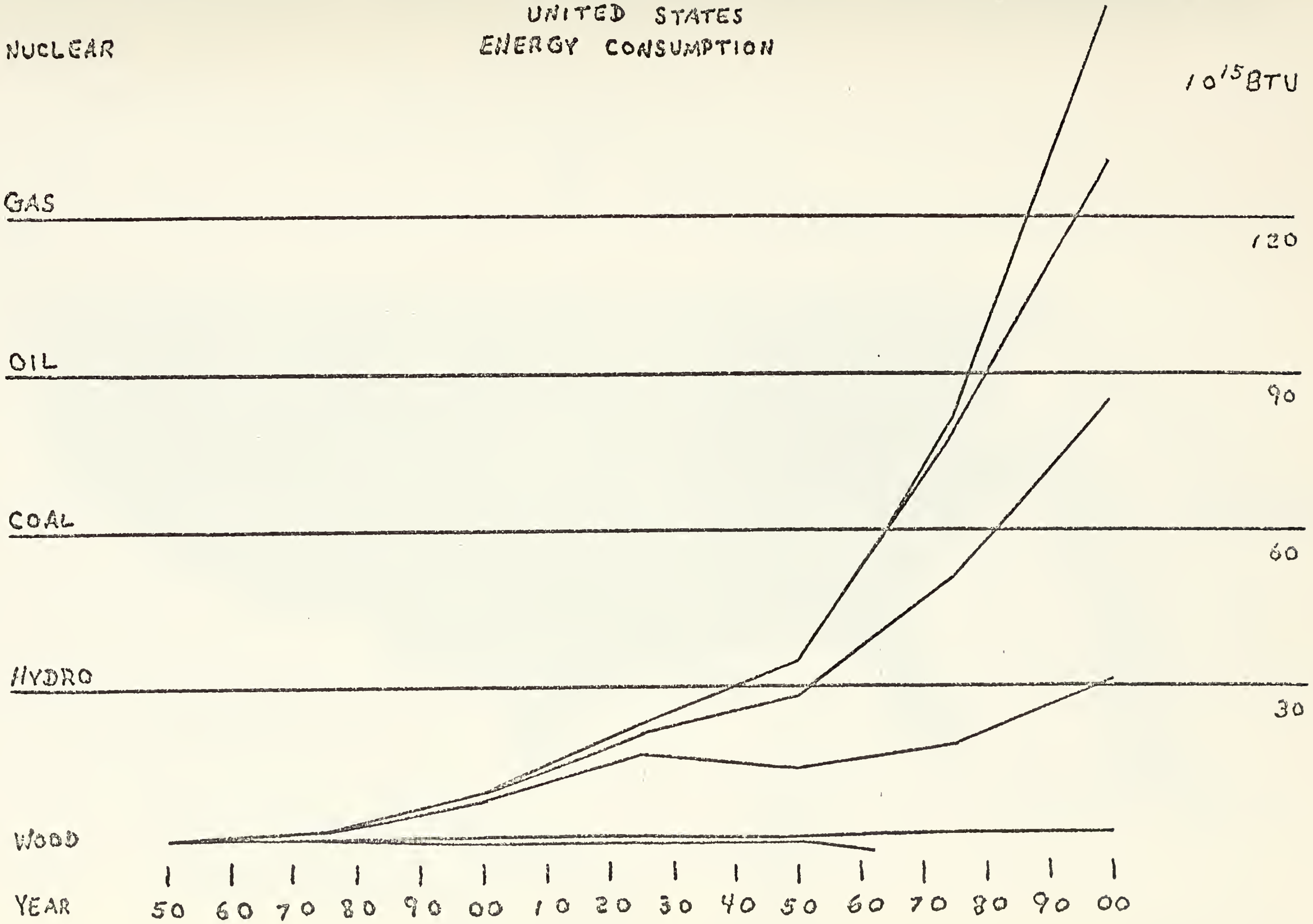
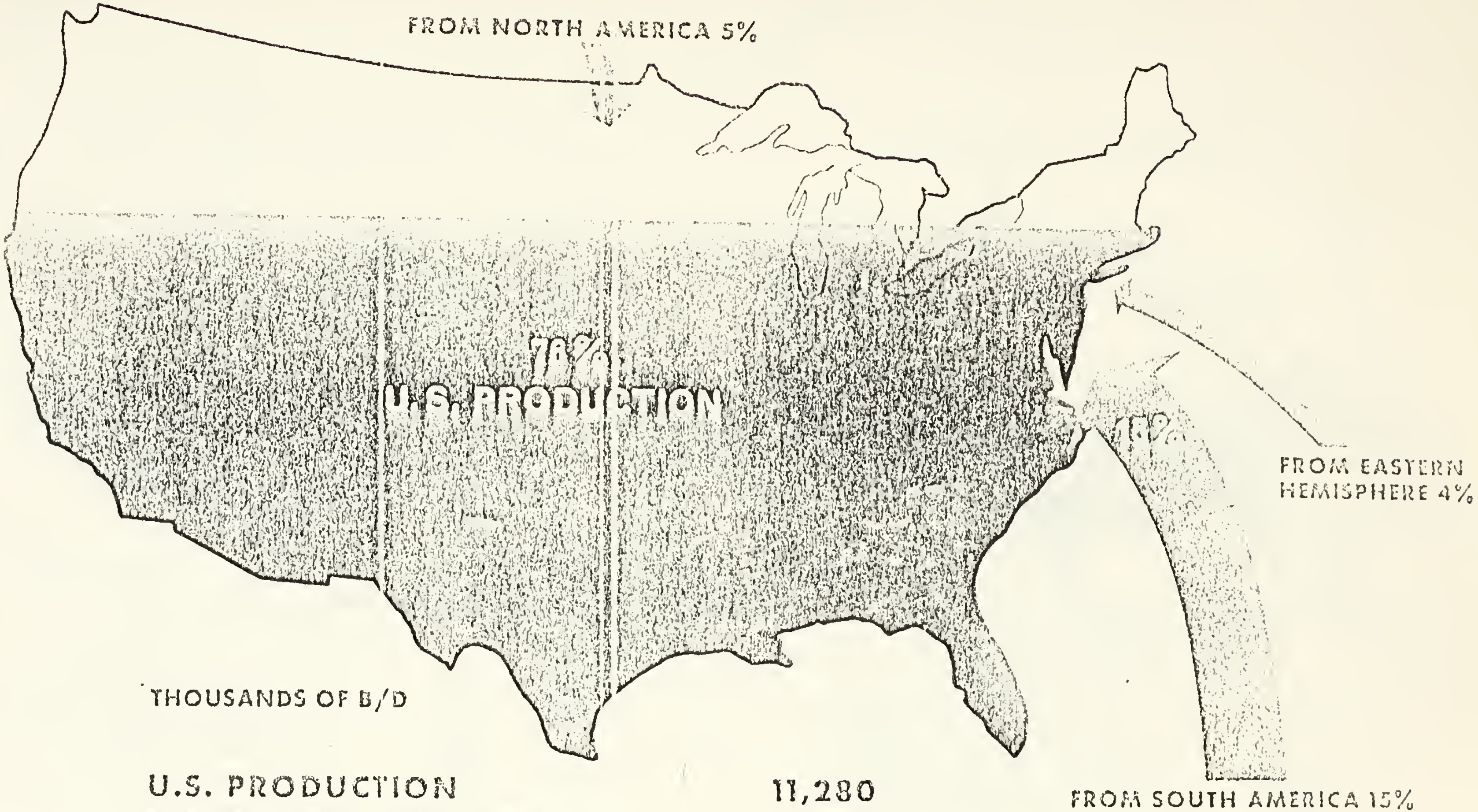


FIG 14
UNITED STATES
ENERGY CONSUMPTION



1970 U.S. DEPENDENCY ON OIL IMPORTS

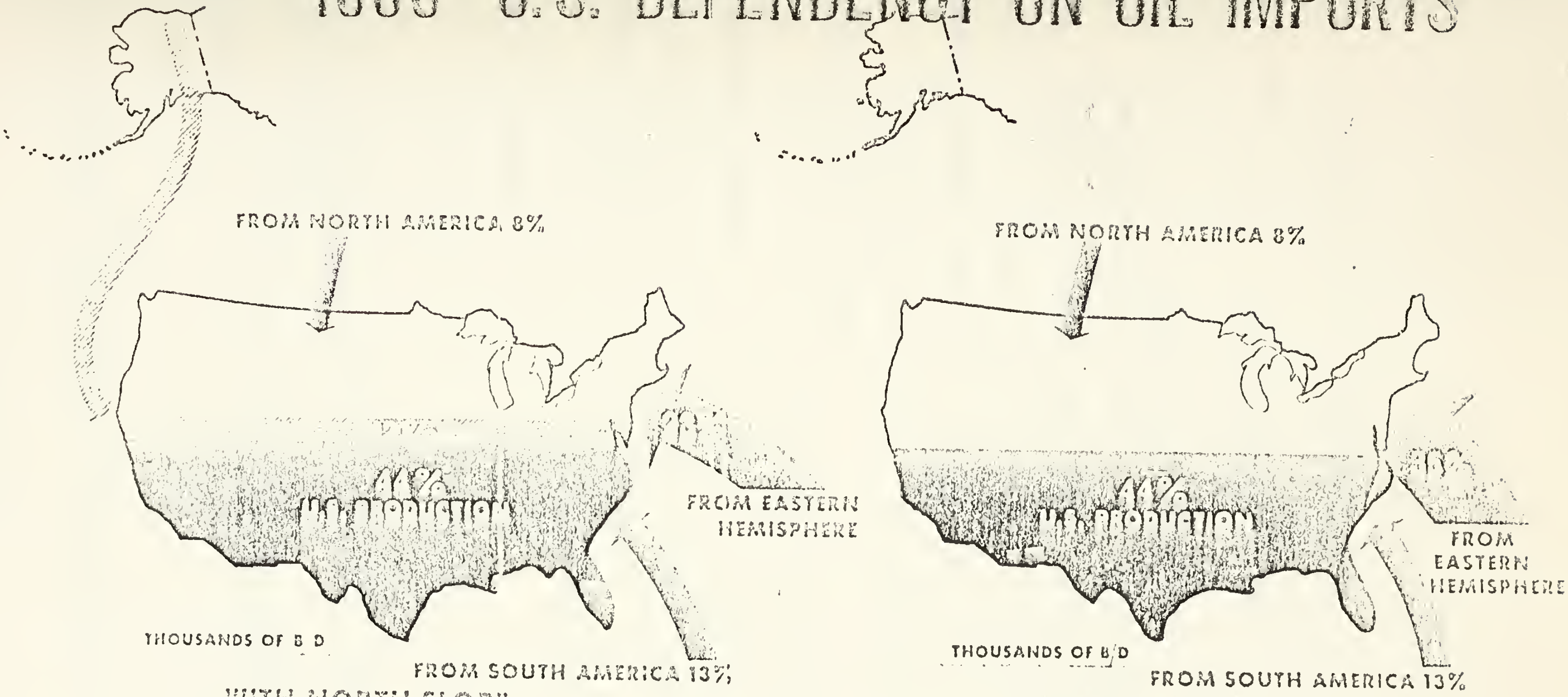


THOUSANDS OF B/D

U.S. PRODUCTION	11,280
NORTH AMERICAN IMPORTS	700
SOUTH AMERICAN IMPORTS	2,200
EASTERN HEMISPHERE IMPORTS	530
TOTAL SUPPLY	14,710

Office of Oil and Gas
Department of the Interior
March 1971

1985 U.S. DEPENDENCY ON OIL IMPORTS



WITH NORTH SLOPE

U.S. PRODUCTION	11,600
ALASKA NORTH SLOPE	3,000
NORTH AMERICAN IMPORTS	2,200
SOUTH AMERICAN IMPORTS	3,500
EASTERN HEMISPHERE IMPORTS	6,150
TOTAL SUPPLY	26,450

WITHOUT NORTH SLOPE

U.S. PRODUCTION	11,600
ALASKA NORTH SLOPE	--
NORTH AMERICAN IMPORTS	2,200
SOUTH AMERICAN IMPORTS	3,500
EASTERN HEMISPHERE IMPORTS	9,150
TOTAL SUPPLY	26,450

Office of Oil and Gas
Department of the Interior
March 1971

CHAPTER II

HISTORY AND BACKGROUND

Antecedants and Beginnings

America's earliest known foreign oil venture dates back to 1865, only six short years after Colonel Edwin L. Drake is credited with discovering America's first commercial oil at Titusville, Pennsylvania. Unfortunately the venture, which took place in Peru, ended in failure.[1]

In 1876 American Oil seekers were exploring Mexico but similarly met with failure.[2]

By 1900 Americans had acquired production in Mexico and shortly thereafter in Rumania. In 1910 major oil strikes were made, developed, and exploited in the states of Tamaulipas and Veracruz. This area subsequently became known as the "golden lane."[3]

By 1919 oil industry investments in Mexican and Rumanian production aggregated 400 million dollars.[4]

During the early years of the century the federal government

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[1] Elmer F. Bennett, "The Petroleum Import Quota System," American Bar Association Section of Mineral and Natural Resources Law 1960 - Proceedings (1960), p.11.

[2] William H. Peterson, The Question of Governmental Oil Import Restrictions (Washington, D.C.: American Enterprise Association, 1959), p. 9.

[3] Id.

[4] Sebastian Raciti, The Oil Import Problem (New York: Fordham University Press), p. 15.

did not seem overly concerned with foreign petroleum investments or imports. Perhaps this was because America had an excess of supply and perhaps it was because America lacked demand for oil at the time..

But the seeds of change were already sown. Lenoir had unveiled his internal combustion engine in 1860. Experiments with the use of his engine in a road vehicle took place in 1862. Benz's automobile appeared in 1884. The Diesel engine was designed in 1892 and was applied in 1897. 1903 marked the first powered flight by the Wright brothers. Henry Ford introduced his Model "T" in 1908. The first ship powered by an internal combustion engine put to sea in 1910.

In 1911 the Supreme Court increased the number of oil companies by breaking up the Standard Oil Trust into thirty four individual concerns.[5]

In a 1917 statement to President Wilson, French Premier Clemenceau observed that oil "is as necessary as blood in the battles of tomorrow."[6] As World War I broke, America's petroleum supply surplus suddenly vanished and a deficit appeared as the oil industry struggled to supply the demands of war. Seven "Gasless Sundays" were observed East of the Mississippi during the fall of 1918 to provide much needed gasoline for the war effort.

Following the war, with the vast expansion of industry, the nascence of farm mechanization, the change from coal to oil as the fuel

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[5] William H. Peterson, The Question of Governmental Oil Import Restrictions, supra note 2, at p. 10.

[6] Sebastian Raciti, The Oil Import Problem, supra note 4, at p. 10.

to drive ships and trains and the appearance of the low cost automobile, demand continued to skyrocket until the United States became a substantial net importer of oil from Mexico during the early 1920's. In 1921, crude oil imports, predominantly from Mexico, approached a disquieting 27 percent of domestic production.[7]

Fear grew that America would be an oil poor nation. "The position of the United States in regard to oil can best be characterized as precarious . . . Americans will have to depend on foreign sources . . ." stated the then Director of the United States Geological Survey.[8] "Within two to five years the oil fields in this country will reach their maximum production and from that time on we will face an ever-increasing decline," commented the then Director of the United States Bureau of Mines.[9] Revision of the tax and public land laws, however, helped to spur exploration and development both at home and abroad.

Conservation Controls and The Constitution

During 1924, President Coolidge established the Federal Oil Conservation Board consisting of the Secretaries of Commerce, Interior, Navy, and War to formulate a national oil policy. The last of the Board's five reports submitted to President Hoover in 1932 was particularly interesting. Asserting that direct regulation of production by the

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[7] Petroleum Industry Research Foundation, United States Oil Imports A Case Study in International Trade (New York: Petroleum Industry Research Foundation, 1958), p. 14.

[8] John B. Boatwright, An Evaluation of the Mandatory Oil Import Program and Its Effects on the American Petroleum Industry (Washington,D.C.: The American University, 1970), p. 36.

[9] Torlief Meloe, Oil Imports: The Economies of Control (New York: Columbia University, 1961), p. 13.

Federal Government was unconstitutional; it recommended that task for the individual states. It also urged that a compact be formed by oil producing states which would forecast demand and allocate it among them. Finally, it suggested that the Federal Government restrict imports in order to preserve state prorationing laws.[10]

State demand prorationing was supposedly a conservation measure instituted to forestall depletion of a limited natural resource. This seems a bit inconsistent, however, since import restrictions tended to increase rather than decrease domestic oil production.

Despite the fact that the conservation movement began before 1900, early state conservation laws had as their objective prevention of surface waste.[11] It was only after the huge strikes of the late 1920's and early 1930's disrupted the supply demand situation, that state conservation legislation aimed at demand prorationing. Nor was the overproduction aided by the depression which sent the price of thirty-six degree gravity, mid-continent crude plummetting to a record low of

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[10] U. S. Federal Oil Conservation Board, Report V: October, 1932 (Washington D. C.: U. S. Government Printing Office, 1932), pp. 2-3, 21-24. In recommending import restrictions, the Board reversed its earlier position. In 1929, it advocated increased imports, contending that "the depletion rates of our own resources can be brought more into accord with that of foreign resources only in one way -- by importing a greater quantity of crude petroleum." (See Report III: February 25, 1925, p. 5) Apparently, the adverse impact on prices of the depression and the East Texas discovery, both of which occurred in the interim between the two reports, prompted the Board to shift its attention from conserving a resource to maintaining the viability of an industry.

[11] For details on some of the early conservation statutes, see Interstate Oil Compact Commission, A Study of Conservation of Oil and Gas in the United States (Oklahoma City, Oklahoma, Interstate Oil Compact Commission, 1964), pp. 18-20, 177-180.

twenty-five cents per barrel in June of 1933.[12] The world wide spread of the depression also had the adverse effects of diminishing export demand.

The first attempts at resolution of the problems confronting the oil industry involved self regulation efforts. Unfortunately these efforts evoked threats of anti-trust action from the Justice Department.[13] Subsequently relief from oversupply was sought through state regulatory legislation and interstate co-operation. State prorationing laws were challenged in court and defied by "hot oil" runners outside court. Oil produced above state allowables and bootlegged in interstate commerce hindered state regulations.[14] Some producing states were hesitant to enforce allowable limitations for fear that such reductions would be offset by increases elsewhere.

The circumstances appeared hopeless when the Governor of Oklahoma on August 4, 1931, ordered all wells under allowables closed down, called in the National Guard and declared martial law for fifty feet around each well. Less than two weeks later the State of Texas followed suit.[15] In 1932 the Supreme Court held that limiting production to market demand was the correct way to prevent "physical

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[12] American Petroleum Institute, Petroleum Facts and Figures (New York: American Petroleum Institute, 1959), pp. 47,375.

[13] Attorney General of the United States, Report of the Attorney General on the Interstate Compact to Conserve Oil and Gas, Washington, D.C., Department of Justice, 1956, p. 34.

[14] Samuel B. Pettengill, Hot Oil: The Problem of Petroleum (New York: Economic Forum Company, 1936), Chapter 2.

[15] Interstate Oil Compact Commission, The Compact's Formative Years 1931-1935 (Oklahoma City, Oklahoma: Interstate Oil Compact Commission, 1954), p. 49.

waste."[16]

Meanwhile the Oil States Advisory Committee initially established by producing states at a conference called by the Governor of Oklahoma on February 28, 1931, attempted to harmonize plans to contend with the oversupply problem. The Committee drafted an interstate oil compact regarding stabilization and limitation of production which it urged Congress to adopt in 1932.

On reconsideration, however, the Governor's Committee decided to request Congress to delay passage of the compact because it might have the effect of jeopardizing proposed legislation to impose tariffs on imports. It did when the American Petroleum Institute and the Independent Producers Association of America withdrew their support when they became enlightened about the incoming Roosevelt Administration oil program.

Several efforts were extended by the federal government to secure voluntary curtailment of imports by importing companies prior to the imposition of mandatory controls by the National Industrial Recovery Act. The following are some examples:

> . . . In February 1931 the Oil States Advisory Committee urged President Hoover to "negotiate" with the importing companies for a reduction of imports. The President subsequently secured agreement from the companies to reduce imports by about 25% of the volume imported in 1930. This was later upped to 30%. The Shell Oil Company promised a reduction of 50% for the remainder of 1931. The U. S. Secretary of Commerce later credited the Committee with securing voluntary curtailment of 60 million barrels of imports during the first nine months of 1931.[17] (Actually imports in all of 1931 were only 21 million barrels

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[16] Champlin Refining Company v. Corporation Commission of Oklahoma, 286 U.S. 210 (1932).

[17] Interstate Oil Compact Commission, The Compact's Formative Years, supra note 15, at pp. 12, 14, 17, 22.

or 18% under 1930 levels.)

> . . . In the following year, even after tariffs were imposed on petroleum imports (June 1932), efforts to secure voluntary restrictions continued. The Federal Oil Conservation Board worked out a system of voluntary informal agreements with leading importers whereby they agreed to curtail their imports by 25% during the last half of 1932.[18]
>
> . . . In 1933, a committee representing oil state governors and producers recommended that imports be continued to be held to last half of 1932 levels. The Secretary of the Interior secured the acquiescence of the three largest importing companies. In September, 1933, this agreed-upon level -- equal to 4½% of domestic demand -- was made mandatory for the duration of the Recovery Act.[19]

The National Industrial Recovery Act was signed into law on June 16, 1933.[20] It authorized industry associations to establish codes of "fair competition". Furthermore, Section 9(C) of the Act authorized the President to prevent interstate shipments of oil produced in violation of state prorationing laws.[21] In Panama Refining Company v. Ryan, a January 5, 1935, decision, the United States Supreme Court struck down section 9(C) of the National Industrial Recovery Act pronouncing that it constituted an illegal delegation of legislative power to the executive since "nowhere in the statute has Congress declared or indicated any policy or standard to guide or limit the President when

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[18] Blakley M. Murphy, Conservation of Oil and Gas: A Legal History (Chicago, Illinois: American Bar Association, 1949) p. 689.

[19] Samuel B. Pettengill, Hot Oil: The Problem of Petroleum, Supra note 14, at pp. 55-56.

[20] The National Industrial Recovery Act of June 16, 1933, ch. 90, §3, 48 Stat. 195.

[21] Id. at § 9(c).

acting under such delegation."[22] One month later Congress passed the Connally "Hot Oil" Act which set up elaborately detailed standards and guides.[23] The Act apparently overcame the opposition of the courts and its constitutionality was upheld in the 1936 Fifth Circuit case of Griswold v. President of the United States, which was never appealed.[24]

The Petroleum Code adopted, pursuant to The National Industrial Recovery Act, provided in Article III, Section I, that the President had authority:

> . . .to limit imports of crude petroleum and petroleum products for domestic consumption to volumes bearing such ratio to the estimated volume of domestic production as will effectuate the purpose of this Code and the National Industrial Recovery Act.[25]

This responsibility was delegated to the Secretary of the Interior, as Administrator of the Code, viewing a rise in imports as a threat to domestic production controls; Secretary of the Interior issued an order on September 2, 1933, limiting imports

> . . . to an amount not exceeding the daily average imports of petroleum and petroleum products during the last six months of 1932.[26]

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[22] Panama Refining Co. v. Ryan, 293 U.S. 388 (1934).

[23] The Connally Hot Oil Act of February 22, 1935, ch. 18, § 1 - 13, 49 Stat. 30. 15 U.S.C. § 715 (1971. 15 U.S.C.A § 715 (1972).

[24] Griswold v. President of the United States, 82 F 2d 922 (5th Cir. 1936).

[25] Petroleum Code of Fair Competition, Article III, § I.

[26] William H. Peterson, The Question of Governmental Oil Import Restrictions, supra note 2, p. 12.

Imports during this period were equal to 4.5 percent of domestic production and they were limited to this percentage during the life of the National Industrial Recovery Act. The Petroleum Administrative Board fixed the quota at an average of 98,000 b/d. There was voluntary compliance and no specific allocations to individual importers.

In Schechter Poultry Corporation v. United States, handed down by the Supreme Court of the United States on May 27, 1935, it was held that the National Industrial Recovery Act was unconstitutional.[27] Accordingly the government subsequently abandoned its quantitative restrictions against imports. This did not, however, induce a sharp increase in imports. This can be accounted for first by voluntary control among importers and secondly by a duty which is discussed in the following section.

At the time of the funeral for the National Industrial Recovery Act, two companies -- Gulf Oil Corporation and Standard Oil Company of New Jersey -- imported most of the crude oil. Together with Shell Oil Company they were the principle importers of residual fuel oil, the principle product. Since the companies desired high domestic crude prices, they had an interest in not drowning the state prorationing laws in a flood of imports.

The Enactment of an Excise

Prior to 1861, when a minor protective duty on kerosene had its inception, petroleum came into the United States duty free.

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[27] Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935).

During the twelve years from 1897 to 1909 there appeared briefly on the books a reciprocal duty on mineral oils imported into America from any country which imposed a duty on like products imported into that country from America.

The Independent Petroleum Association of America, which was formed for the express purpose of seeking import limitations in 1929, led a vigorous but unsuccessful campaign to enact a tariff in 1930 and 1931. Failing in this attempt, the Association proposed an excise tax on crude oil and refined products be incorporated in the Revenue Act of 1932. The House of Representatives passed this legislative proposal but reduced the tax rates originally suggested. The Senate, after further reducing the tax rates and reversing itself several times, finally passed the measure by the relatively narrow margin of 43 to 37.

The Internal Revenue Act of 1932 levied a manufacturers' excise tax on petroleum imports as follows:

> Crude petroleum, 1/2 cent per gallon; fuel oil derived from petroleum, gas oil derived from petroleum, and all liquid derivatives of crude petroleum, except lubricating oil and gasoline or other motor fuel, 1/2 cent per gallon; gasoline or other motor fuel, $2\frac{1}{2}$ cents per gallon; lubricating oil, 4 cents per gallon; paraffin and other petroleum wax products, 1 cent per pound.[28]

The tax was levied, assessed, collected, and paid in the same manner as a duty imposed by the Tariff Act of 1930.[29] Under the terms of the Act the tax was imposed unless treaty provisions of the United States provided otherwise.

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[28] The Revenue Act of June 6, 1932, ch. 209, §601, 47 Stat. 259.

[29] The Tariff Act of June 17, 1930, ch. 497, §338, 46 Stat. 590. 19 U.S.C. §1202 (1971). 19 U.S.C.A. §1202 (1972).

Late in 1939 the Venezuela Reciprocal Trade Agreement became effective. Under this agreement the 1932 excise tax was reduced as follows:[30]

> Crude petroleum, topped crude petroleum, and fuel oil derived from petroleum including fuel oil known as gas oil ¼¢ per gal.
>
> Provided, that such petroleum and fuel oil entered, or withdrawn from warehouse, for consumption in any calendar year in excess of 5 per centum of the total quantity of crude petroleum processed in refineries in continental United States during the preceding calendar year, as ascertained by the Secretary of the Interior of the United States, shall not be entitled to a reduction in tax by virtue of this item, but the rate of import tax thereon shall not exceed ½¢ per gal.

After the Venezuela Agreement quotas were established and amended by presidential proclamation, these remained in effect until the Mexican Receiprocal Trade Agreement of 1943 when they were eliminated.[31] In 1947 a multilateral agreement was worked out covering all oil products not included in the Venezuelan or Mexican Agreements.

In 1949 the General Agreement on Tariffs and Trade became effective. Pursuant to the provisions of the General Agreement on Tariffs and Trade, the 1932 excise tax was further reduced as follows:[32]

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[30] Reciprocal Trade Agreement with Venezuela, November 6, 1939, 54 Stat. 2375 (1939). E.A.S. No. 180 (Effective Date November 6, 1939. See also Reciprocal Trade Agreement with Venezuela, December 12, 1939, 54 Stat. 2451 (1939) E.A.S. No. 191 (Effective Date December, 12, 1939) and Reciprocal Trade Agreement with Venezuela, December 28, 1940. 54 Stat. 2456 (1940) E.A.S. No. 192 (Effective Date December 28, 1940).

[31] Reciprocal Trade Agreement with Mexico, December 23, 1942. 57 Stat. 833 (1942) E.A.S. No. 311 (Effective Date December 23, 1942).

[32] General Agreement on Tariffs and Trade, Opened for signature June 30, 1948. 61 (5)(6) Stat. A 3 - A 2054 (1947) T.I.A.S. No. 1700 (Effective Date January 1, 1948).

Int. Rev. Code Sect.	Description of Products	Rate of Import Tax
3422	Topped crude petroleum, fuel oil derived from petroleum including fuel oil known as gas oil, and all liquid derivatives of crude petroleum (except lubricating oil and such derivatives specified hereinafter in any item 3422)	¼¢ per gal.
	Provided, That in no event shall the rate of import tax applicable under section 3422, Internal Revenue Code, (1) or any modification thereof, to topped crude petroleum or fuel oil derived from petroleum be less than the rate of such tax applicable to crude petroleum.	
3422	Mineral oil of medicinal grade, derived from petroleum	½¢ per gal.
3422	Gasoline or other motor fuel.	1¼¢ per gal.
3422	Lubricating oil	2 ¢ per gal.
3422	Paraffin and other petroleum wax products.	½¢ per lb.

(1) (53 Stat. 414; 26 U.S.C. § 3422)

Thus by 1947 the excise tax imposed by the Congress in 1932 had virtually been cut in half by the Venezuelan and Mexican Reciprocal Trade Agreements and the GATT. Moreover, through application of the most favored nation clause of the GATT, the duties established thereunder became applicable to oil imports from all signatory nations.

The Mexican Reciprocal Trade Agreement was abrogated in late 1950. As a consequence the duties and quota system in effect from 1939 were temporarily reinstated until 1952.

In 1952 the Venezuelan Reciprocal Trade Agreement was renegotiated. The result was that quotas were again eliminated and excise

taxes reduced as follows:[33]

Int. Rev. Code Sect.	Description of Products	Rate of Import Tax
3422	Crude petroleum, topped crude petroleum, and fuel oil derived from petroleum (including fuel oil known as gas oil):	
	Testing under 25 degrees A.P.I	1/8¢ per gal.
	Testing 25 degrees A.P.I. or more	¼¢ per gal.
3422	Liquid derivatives of crude petroleum (except mineral oil of medicinal grade and except any product described in any other item 3422 of this Schedule)	¼¢ per gal.
3422	Gasoline or other motor fuel	1¼¢ per gal.
3422	Lubricating oil	2¢ per gal.
3422	Paraffin and other petroleum wax products	½¢ per lb.

In 1970 the President's Cabinet Task Force on Oil Import Control recommended a special "security" tariff be imposed under the security provision of the Trade Expansion Act of 1962. This recommendation was not accepted at the time.

The ten percent surcharge on import duties promulgated on August 15, 1971, by the President was inapplicable to oil imports under the "National Security clause". The question is now moot, however, since the President revoked the surcharge on December 20, 1971.

On June 26, 1972, four days before termination of the 1952 Venezuelan Reciprocal Trade Agreement which determined United States import taxes on petroleum for the last twenty years, the State Department announced agreement on portions of a new agreement with Venezuela permitting tariff levels on imports from all sources to remain constant.

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[33] Reciprocal Trade Agreement with Venezuela. August 28, 1952, (1952) 3 (3) U.S.T. 4195. T.I.A.S. No. 2565 (Effective Date August 28, 1952).

Reversion to former levels would have meant a duty increase of $165,000,000.00 per year.[34]

Duties provided in Schedule 4, Part 10 - "Petroleum, Natural Gas and Products Derived therefrom", Tariff Schedules of the United States, set forth on the next page, were in effect until May 1, 1973, when President Nixon suspended them in Proclamation 4218.[35]

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[34] Oil Daily Bureau, "Veneuela Pact's End Points to Many Woes," Oil Daily, New York, New York: the Oil Daily, Jan. 27, 1972, p. 1.

[35] Presidential Proclamation No. 4010, April 18, 1973, 38 Fed. Reg. 9645.

TARIFF SCHEDULE

PETROLEUM, NATURAL GAS, AND PRODUCTS DERIVED THEREFROM

Item	Articles	Rates of duty	
		1	2
	Part 10 headnotes: 1. Any product described in this part and also in part 1 of this schedule is classifiable in said part 1, except fuel oils, motor fuel, and lubricating oils and greases, containing by weight not over 25 percent of any product described in said part 1. This part does not cover— (i) paraffin and other petroleum waxes (see part 13B of this schedule), or (ii) petroleum asphalts (see part 1J of schedule 5). 2. For the purposes of this part— (a) "Reconstituted crude petroleum" (items 475.05 and 475.10) is a product which is essentially the equivalent of crude petroleum and which is made by adding fuel oil, naphtha, or other petroleum fractions to crude or topped crude petroleum; and (b) "Motor fuel" (item 475.25) is any product derived primarily from petroleum, shale, or natural gas, whether or not containing additives, which is chiefly used as a fuel in internal-combustion or other engines. 3. For the purposes of items 475.65 and 475.70 of this part— (a) a product is considered to be in liquid form if— (i) the penetration is more than 350 units (35 millimeters) when tested by the procedure and equipment specified in American Society of Testing Materials (ASTM) Designation: D-5 with the use of a 50-gram load for 1 second at 77° F., or when tested by a procedure which provides equivalent results, and (ii) such product is not in an essentially gaseous state at a temperature of 60° F. and at a pressure of 14.65 pounds per square inch (absolute), regardless of the condition of the product at the time of importation; and (b) in determining the relative weights of components of the mixtures provided for in items 475.65 and 475.70, naphtha and other petroleum derivatives which may be present in such mixtures as solvents shall be disregarded.		
	Crude petroleum (including reconstituted crude petroleum) topped crude petroleum; crude shale oil; and distillate and residual fuel oils (including blended fuel oils) derived from petroleum, shale, or both, with or without additives:		
475.05	Testing under 25 degrees A.P.I.	0.125¢ per gal.	0.5¢ per gal.
475.10	Testing 25 degrees A.P.I. or more	0.25¢ per gal.	0.5¢ per gal.
475.15	Natural gas, methane, ethane, propane, butane, and mixtures thereof.	Free.	Free.
475.25	Motor fuel	1.25¢ per gal.	2.5¢ per gal.
475.30	Kerosene derived from petroleum, shale oil, or both (except motor fuel).	0.25¢ per gal.	0.5¢ per gal.
475.35	Naphthas derived from petroleum, shale oil, natural gas, or combinations thereof (except motor fuel).	0.25¢ per gal.	0.5¢ per gal.
475.40	Mineral oil of medicinal grade derived from petroleum, shale oil, or both.	0.2¢ per gal.	0.5¢ per gal.
	Lubricating oils and greases, derived from petroleum, shale oil, or both, with or without additives:		
475.45	Oils	2¢ per gal.	4¢ per gal.
	Greases:		
475.55	Containing not over 10 percent by weight of salts of fatty acids of animal (including marine animal) or vegetable origin.	10% ad val.	20% ad val.
475.60	Other	1¢ per lb. +10% ad val.	2¢ per lb. +20% ad val.
	Mixtures of hydrocarbons not specially provided for, derived wholly from petroleum, shale oil, natural gas, or combinations thereof, which contain by weight not over 50 percent of any single hydrocarbon compound:		
475.65	In liquid form	0.25¢ per gal.	0.5¢ per gal.
475.70	In other than liquid form	Free.	Free.

STAGED RATE MODIFICATIONS

Proc. No. 3822, Dec. 16, 1967, 32 F.R. 19002, provided:

Each rate in the following table, for an item in the Tariff Schedules of the United States (TSUS) identified therein (or for the TSUS, Schedule 3, Part 3A, headnote 4(1)), is inserted in column numbered 1 in such item (or in such headnote 4(1)), effective for articles provided for therein which are entered, or withdrawn from warehouse, for consumption on and after the date at the head of the column in which such rate is set forth and, except for rates in the final column, such rate shall be superseded by the rate for that item (or for such headnote) in the immediately following column, effective for articles which are entered, or withdrawn from warehouse, for consumption on and after the date at the head of such latter column:

TSUS item	Prior rate	Rate of duty, effective with respect to articles entered on and after January 1—				
		1968	1969	1970	1971	1972
475.40	0.5¢ per gal.	0.2¢ per gal.	0.2¢ per gal.	0.2¢ per gal.	0.2¢ per gal.	0.2¢ per gal.

Voluntary Import Program -- Phase I

During the years of the second World War, the United States and its allies consumed almost seven billion barrels of oil, six billion of which were produced in the United States. Indeed, as Maurice Hellner has indicated the old Napoleonic adage about an army moving on its stomach had to be rewritten because sixteen times more oil than food stuffs were shipped in World War II. Although America entered the war with an excess of productive capacity, it left with a deficit. During the decade immediately following World War II, the demand for petroleum rose rapidly and imports increased at an average rate of fifteen percent per year. This trend was viewed with alarm by the independent producers. Due to the lack of supply in the domestic sector during 1947 the federal government requested an increase in imports. In 1948 limitations were imposed on exports and for the first time since 1922 imports exceeded exports.

In response to the clamor of the independent producers, a series of hearings before various committees of the House and Senate were convened. The House Small Business and Ways and Means Committees and the Senate Finance Committee all analysed and evaluated legislative proposals to limit oil imports.

In May, 1949, a subcommittee of the House Select Committee on Small Business headed by Congressman Eugene J. Keogh, investigated the impact of imports on the small independent producer. The Committee concluded its hearings with a recommendation that any controls imposed by Congress at a future date be "voluntary". Although the recommendations of the Committee were never executed, it is

interesting to note that the major importing companies accepted the idea that imports should not surpass a level considered reasonable in relation to domestic production and supported the principle of voluntary import limitations. A 1949 Reciprocal Trade Act amendment proposed by Senator Thomas would have set the level of oil imports at five percent of the demand for the same quarter of the previous year as determined by the Bureau of Mines.[36] The measure was defeated by a single vote. The policy of the times was summed up by the industry slogan "supplement but not supplant." By 1955 imports were coming into the country at three times the 1945 rate.

Voluntary restrictions on crude oil imports can be traced back to 1955 when they had their inception. The official voluntary import program went through two distinct and separate phases before replacement by a compulsory program in early 1959. Phase I continued almost thirty months until July, 1957. Phase II lasted twenty months until March, 1959. Phase I will be examined in this section.

On June 30, 1954, President Eisenhower appointed an Advisory Committee on Energy Supplies and Resources Policy, chaired by the Director of the Office of Defense Mobilization and consisting of the Secretaries of State, Treasury, Defense, Interior, Commerce, Labor, and the Attorney General to undertake "a study to evaluate all factors pertaining to the continued development of energy supplies and resources and fuels in the United States, with the aim of strengthening

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[36] National Petroleum Refiners Association, Oil Import Digest, Vol. 1. (Washington D. C., National Petroleum Refiners' Association, 1961), p. A-13.

the National Defense, providing orderly industrial growth and assuring supplies for our expanding national economy and any future emergency."[37]

On February 26, 1955, the committee expressed the view that,

> . . .if the imports of crude and residual oils should exceed significantly the respective proportions that these imports of oils bore to the production of domestic crude oil in 1954, the domestic fuels situation could be so impaired as to endanger the orderly industrial growth which assures the military and civilian supplies and reserves that are necessary to the national defense.[38]

The Committee concluded that, "imports should be kept in the balance recommended above" and that

> it is highly desirable that this be done by voluntary, individual action of those who are importing or those who become importers of crude or residual oil.[39]

This recommendation was adopted by President Eisenhower and marked the outset of the first phase of the voluntary import program.

In order to ensure compliance the Committee further recommended,

> That if in the future the imports of crude oil and residual fuel oils exceed significantly the respective proportions . . . appropriate action should be taken.[40]

With the passage of the Trade Agreements Extension Act of 1955, authorizing the President under certain circumstances to impose compulsory import controls, the constant threat of mandatory restrictions served as a limited sanction.

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[37] Cabinet Task Force on Oil Import Control, 1969-1970, George P. Schultz, Chairman. The Oil Import Question (Washington, D.C.: U. S. Government Printing Office, 1970), p. 164.

[38] Presidential Advisory Committee on Energy Supplies and Resources Policy, 1955-1956, Arthur S. Fleming, Chairman. Report on Energy Supplies and Resources Policy (Washington D.C.: The White House, 1955).

[39] Id.

[40] Id.

Under the watchful surveillance of the Presidential Advisory Committee on Energy Supplies and Resources Policy, the administration of Phase I of the voluntary import program was entrusted to the Office of Defense Mobilization. The Office of Defense Mobilization issued periodic directives to importers regarding the maximum level of imports of crude and residual oils. It did not, however, attempt to limit specific company imports. Estimates of anticipated imports were requested and received by the Office of Defense Mobilization from the major importers.

On October 17, 1956, only a few short months after voluntary controls were in effect, Phase I of the voluntary import program was severly weakened by recommendations of the Presidential Advisory Committee on Energy Supplies and Resources, exempting crude oil imports originating in Canada and Venezuela, residual fuel oil imports and all imports into District V regardless of origin. The rational of Western Hemisphere security was the basis for the exemptions. Efforts were primarily concentrated on the East Coast imports of Middle East crude oil.[41]

The weakened voluntary controls failed to stop imports from continuing to pour into the country at an ever increasing rate. The increase being attributable mainly to the exemptions. More sharp rises in imports were forecast by submissions from industry for the last half of 1956. Consequently on August 7, 1956, the Independent

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[41] Presidential Advisory Committee on Energy Supplies and Resources, 1956, Arthur S. Fleming, Chairman, Report (Washington, D.C.: The White House, October 17, 1956).

Producers Association of America formally petitioned the Office of Defense Mobilization requesting action pursuant to Section seven of the Trade Agreements Extension Act of 1955.

The Director of Defense Mobilization, during a hearing held in October and again in December, suspended further action because of the Suez Crises. But he did express the belief that except for the Suez Crises the situation would have demanded Presidential action.

On March 6, 1957, The Director of Defense Mobilization requested that he be furnished estimates of the plans of importing companies for the remainder of 1957. The new estimates proved substantially higher than those submitted in the fall of 1956.

On April 23, 1957, Gordon Gray, the Director of the Office of Defense Mobilization advised the President pursuant to Section seven of the Trade Agreements extension Act of 1955, that these higher estimates constituted a threat to our national security.[42] On April 25, 1957, the President in a reply memorandum indicated that he agreed and that he would cause an investigation to be made to determine the facts. At the same time the President requested that the Director of the Office of Defense Mobilization explore the possibility that oil imports might effectively be limited by individual voluntary action of importing companies.[43]

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[42] Memorandum from the Director of the Office of Defense Mobilization, Gordon Gray to the President, Dwight D. Eisenhower, April 23, 1957.

[43] Memorandum from the President, Dwight D. Eisenhower, to the Director of the Office of Defense Mobilization, Gordon Gray, April 25, 1957.

Voluntary Import Program -- Phase II

On June 26, 1957, President Eisenhower appointed a special Cabinet Committee to Investigate Crude Oil Imports chaired by the Secretary of Commerce and consisting of the Secretaries of State, Defense, Treasury, Interior, and Labor. The Cabinet Committee, acting in the Presidents behalf, was ordered to determine the facts as to whether crude oil was being imported into the United States in such quantities as to threaten to impair the national security. The committe was requested to,

> . . . view the national security in its broadest terms and to seek to balance such general factors as our long-term crude oil, the military, economic, and diplomatic considerations involved in obtaining crude oil from various foreign areas, the maintenance of a dynamic domestic industry that will meet national needs in peace or war, and any significance of imports in different regions of the country.[44]

The Cabinet Committee to Investigate Crude Oil Imports issued its report on July 29, 1957. The report confirmed the findings of the Office of Defense Mobilization that the rise in imports for the latter half of 1957 threatened to impair the national security and that the threat called for a limitation of imports. Therefore, the Committee recommended that unless the importing companies complied voluntarily that the President find that there was a threat to the national security within the meaning of Section seven of the Trade Agreements Extension Act of 1955.[45]

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[44] James C. Hagerty, press release Special Cabinet Committee to Investigate Crude Oil Imports, 1957-1958, (Washington D. C.: The White House, June 26, 1957).

[45] Special Cabinet Committee to Investigate Crude Oil Imports, 1957-1958, Sinclair Weeks, Chairman, Petroleum Imports, (Washington, D.C.: The White House, July 29, 1957). 22 Fed. Reg. 6804 (1957).

Phase II of the Voluntary Import Program did not return to the 1954 import/production ratio as a basis for controls. This was considered impossible due to the magnitude of subsequent increases in imports. Rather Districts I to IV were limited to an import production ratio of approximately twelve percent and District V imports were restricted to the difference between demand and domestic supply. In Districts I to IV all importing companies were requested to cut back ten percent below their average crude oil imports for 1954, 1955, and 1956 except small companies and new importers. These organizations were allowed to import amounts authorized by the Office of Defense Mobilization, but in no instance in an amount in excess of 12,000 barrels per day over their 1956 imports. Companies planning to become importers were required to present their plans at least six months before they were scheduled to become operational.

Phase II of the voluntary import program involved direct control of the crude oil imports of individual companies and was intended to have substantially the same effect as mandatory controls.

It is interesting to note, however, that the program limited only crude oil imports and not product imports which remained essentially uncontrolled. Residual fuel oil was considered a product and remained exempt.

Imports from Canada and Venezuela, previously exempted, again became subject to control. In addition the report failed to mention the impact of the lack of import controls on state production regulation and conservation legislation. Unrestricted imports would undoubtedly have had a devastating effect on state law.

Throughout Phase II of the Voluntary Import Program certain recurrent and intensifying problems indicated its possible future demise. Among these problems were a rapid increase in the number of new importers, noncompliance by importers, and lack of control over product imports.

The principal cause of the collapse of the voluntary program was a lengthening list of new importers. Prior to 1952, eleven integrated companies accounted for more than ninety-five percent of all imports. At the outset of the voluntary program there were only thirty importers; by September, 1958, that number had nearly doubled to fifty-five and over one hundred additional companies had made applications for quotas.

The newcomer problem was exacerbated by the lack of any consistent method of determining who was an eligible newcomer and how much of an allocation each was to receive.

The Administrator attempted to set up standards by which to deny new applications, but he apparently lacked enforcement authority. This situation was partially remedied when the President accepted the report of the Special Committee to Investigate Crude Oil Imports in which an importer was defined,

> . . . as one (1) who was engaged in the importation of crude oil into the United States during the last half of 1957, or (2) had an approved allocation under the Voluntary Oil Import Program on January 1, 1958, or (3) had existing refinery capacity within the United States.[46]

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[46] Special Cabinet Committee to Investigate Crude Oil Imports, 1957-1958, Sinclair Weeks, Chairman, <u>Supplemental Report 3</u> (Washington, D.C.: The White House, March 24, 1958).

The problem of allocations remained however; in March of 1958 the Administrator cut the quotas of existing importers by approximately eight percent to make room for new importers. In the ensuing months more and more new importers applied for allocations. Struggling to keep his head above the flood of new applications, the administrator proposed a new system of allocations based on refinery runs. The historical importers rose in opposition and a compromise was ultimately reached under the mandatory program where historical quotas were adjusted downward over time and finally done away with completely.

A contributing cause of the failure of voluntary import controls was noncompliance. At first it was naively hoped that public opinion would bring non-compliers into line. Pursuant to a July, 1957, plan, identities of non-compliers were revealed. On February 17, 1958, three companies were cited for exceeding their quotas during the first six months and as yet uncommitted to cooperation with the Federal Government; Tidewater had exceeded its allocation by 34,000 b/d; Sun had exceeded its allocation by 8000 b/d; Eastern States had exceeded its allocation by 6000 b/d. A number of other companies, while continuing to assure the Interior Department of their intention to comply, imported slightly more than their allocations. Most established importing companies did comply, however. The underlying problem was the voluntary nature of the program. Late in March, 1958, it received its first teeth when the Buy American Act of 1933 was applied to urge government suppliers of oil to fall into line. Without certificates of compliance uncooperative companies lost their share

of the government oil market.[47]

The increase of unfinished oil and product imports was also a cause contributing to the abandonment of voluntary controls. Quotas on crude oil actually invited the importation of unrestricted products and export of American refineries. In one year unfinished oil imports increased more than sixty-six fold from 3000 b/d in 1957 to 200,000 b/d in 1958. During the two years of the voluntary program, product imports increased four fold from 50,000 b/d in 1956 to 200,000 b/d in 1958.[48]

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[47] Executive Order No. 10761, March 27, 1958. 23 Fed. Reg. 2067, 3 CFR, 1954 - 1958 Comp., p. 409. See also, The Buy American Act of March 3, 1933, ch. 212, §2, 47 Stat. 1520, 41 U.S.C § 10a - 10c (1971), 41 U.S.C.A § 10a - 10c (1972). Also ch. 787 §633 63 Stat. 1024 41 U.S.C §10 d (1971), 41 U.S.C.A. § 10d (1972)

[48] Oil Import Administration figures.

CHAPTER III

FOUNDATION LEGISLATION

A Legislative Underpinning

Although Article II, Section 2, Clause 2 of the Constitution of the United States empowered the President to make treaties and in the words of that document, "He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur," the capacity of the United States to enter into agreements with other countries was not limited by that grant of authority.[1]

The constitution recognized a difference between "treaties" and "agreements" or "compacts" but failed to demonstrate what the difference was, and any distinction which may once have existed has been blurred beyond recognition with the passage of decades and centuries. The President's authority to enter into agreements or compacts with other countries without the consent of the Senate can be inferred to be founded on his powers as an instrument of foreign relations and as Commander-in-Chief.[2]

From an early date Congress has specifically allowed the Chief Executive to enter into agreements. The first use of the executive

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[1] United States Constitution, art. II , § 2.

[2] Id.

agreement under the Constitution was for the development of international communication by means of the postal service. Subsequent legislation authorized executive agreements on patents, copyrights, and trademarks. By far the most abundant source of executive agreements, however, has been the statutory basis for reciprocal trade agreements with other countries.

This type of legislation was early sustained against the challenge that it attempted an unconstitutional delegation "of both legislative and treaty-making powers" in the case of Field against Clark handed down in 1892.[3]

The culminating act of this species was that of June 12, 1934.[4] The authority of the President to enter into reciprocal trade agreements with foreign nations was granted by Congress in this 1934 Act amending the Tariff Act of 1930.[5] The amendment empowered the President to enter into trade agreements for a period of three years. The President's authority to execute reciprocal trade agreements has been continued from time to time by extension. No such extension has exceeded three years in duration and there have been extensions for one and two years.

The Trade Agreements Extension Act of 1954

In 1953 President Eisenhower requested a one year extension to be enacted pending a comprehensive reexamination of the foreign economic

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[3] Field v. Clark, 143 U.S. 649 (1892).

[4] The Act of June 12, 1934, P.L. 316, ch. 474, 31 et seq., 48 Stat 943. 19 U.S.C. §1351 (1971). 19 U.S.C.A. §1351 (1972).

[5] The Tariff Act of June 17, 1930, ch. 497 §338, 46 Stat 590 19 U.S.C. §1202 (1971). 19 U.S.C.A. §1202 (1972).

Policy of the United States to be undertaken by a bipartisan commission. Accurdingly an interim measure was designed to maintain the status quo during a searching review of the overall international tariff and trade situation. This work was partially accomplished by completion of a study and issuance of a report by the Commission on Foreign Economic Policy on January 25, 1954.

However, the crushing press of other urgent legislation did not permit the holding of probing, public hearings which would have been required for a detailed analysis of general trade-agreement legislation. Since the General Agreement on Tariffs and Trade was to be reviewed and revised by State Department negotiations during 1954 and 1955, it was felt that Congress would have an opportunity to carefully evaluate the revamped provisions during the ensuing year.[6]

H.R. 9474 was referred to the Senate Finance Committee in order to extend for one additional year the authority of the President to enter into trade agreements under Section 350 of the Tariff Act of 1930 as amended and extended.[7] Senate Report No. 1605 issued favorably from the committee on June 16, 1954.[8] Under prior law the authority of the President was due to expire on June 12, 1954. On the date of expiration, a one year extension until June 12, 1955, was granted.

Section 2 of the law as finally enacted provided:

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[6] H.R. Rep. No. 1777, 83d Cong. 2d Sess. 1 (1954).

[7] H.R. 9474 83d Cong., 2d Sess. (1954).

[8] S. Rep. No. 1605, 83d Cong., 2d Sess. 1 (1954).

> No action shall be taken pursuant to such Section 350 to decrease the duty on any article if the President finds that such reduction would threaten domestic production needed for projected national defense requirements.[9]

The Trade Agreements Extension Act of 1955

With Presidential authority to enter into trade agreements due to expire on June 12, 1955, the matter was considered again the following year. The House version of the bill to continue the power of the President to carry out trade agreements by proclamation until the close of June 30, 1958, was H.R. 1.[10]

House Report Number 50 of February 14, 1955, accompanying H.R. 1 in its Defense Considerations section included an expression of the deep disturbance of the committee during the public hearings by many sectors of industry concerning the defense implications of tariff policy.[11] The theory and practice of free trade were rejected as perilous to the safety of the country. It was determined that the abolition of certain industries because of their inability to match foreign competition was "economically efficient" but also "economically and militarily vulnerable." In spite of this, however, H.R. 1 contained no provision relating to the essential factor of national security such as Section 2 of the Trade Agreements Extension Act of 1954.

On February 26, 1955, a report based on a study by the President's Advisory Committee on Energy Supplies and Resources Policy was issued by the White House. That report emphasized the importance of a strong

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[9] The Trade Agreements Extension Act of July 1, 1954, ch. 445, §2, 68 Stat. 360.

[10] H.R. 1, 84th Cong., 1st Sess. (1955).

[11] H.R. Rep. No. 50, 84th Cong., 1st Sess., 1 (1955).

domestic petroleum industry and stated with regard to crude and residual fuel oil imports:

> An expanding domestic oil industry, plus a healthy oil industry in friendly countries which help to supply the United States market, consitute basically important elements in the kind of industrial strength which contributes most to a strong national defense. Other enery industries, especially coal, must also maintain a level of operation which will make possible rapid expansion in output should that become necessary. In this complex picture both domestic production and imports have important parts to play; neither should be sacrificed to the other.
>
> Since World War II importation of crude oil and residual fuel oil into the United States has increased substantially, with the result that today these oils supply a significant part of the United States market for fuels.
>
> The committee believes that if the imports of crude and residual oils should exceed significantly the respective proportions that these imports of oils bore to the production of domestic crude oil in 1954, the domestic fuels situation could be so impaired as to endanger the orderly industrial growth which assures the military and civilian supplies and reserves that are necessary to the national defense. There would be an inadequate incentive for exploration and discovery of new sources of supply.
>
> In view of the foregoing, the committee concludes that in the interest of national defense imports should be kept in the balance recommended above. It is highly desirable that this be done by voluntary, individual action of those who are importing or those who become importers of crude or residual oil. The committee believes that every effort should be made and will be made to avoid the necessity of governmental intervention.
>
> The committee recommends, however, that if in the future the imports of crude oil and residual fuel oils exceed significantly the respective proportions that such imported oils bore to domestic production of crude oil in 1954, appropriate action should be taken.
>
> The committee recommends further that the desirable proportinate relationships between imports and domestic production be reviewed from time to time in the light of industrial expansion and changing economic and national defense requirements.
>
> In arriving at these conclusions and recommendations, the committee has taken into consideration the importance to the economies of friendly countries of their oil exports to the United States as well as the importance to the United States of the accessibility of foreign oil supplies both in peace and war.[12]

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[12] Presidential Advisory Committee on Energy Supplies and Resources Policy 1955-1956, Arthur F. Fleming, Chairman. Report on Energy Supplies and Resources Policy (Washington, D. C.: The White House, February 26, 1955), p. 1.

Perhaps because of the White House release, perhaps because of the want of a national defense provision and perhaps because of several proposals dealing with other specific commodities, Senate Report No. 232 of April 28, 1955 amended H. R. 1 by adding Section 7 which amends Section 2 of the Act of July 1, 1954, the Trade Agreements Extension Act of 1954, by adding a new subsection which provided:

> (b) In order to further the policy and purpose of this section, whenever the Director of the Office of Defense Mobilization has reason to believe that any article is being imported into the United States in such quantities as to threaten to impair the national security, he shall so advise the President, and if the President agrees that there is reason for such belief, the President shall cause an immediate investigation to be made to determine the facts. If, on the basis of such investigation, and the report to him of the findings and recommendations made in connection therewith, the President finds the existence of such facts, he shall take such action as he deems necessary to adjust the imports of such article to a level that will not threaten to impair the national security.[13]

In Conference Report Number 745 of June 9, 1955, the House receded with a clarifying amendment, striking out "the existence of such facts" in the second sentence and inserting "that the article is being imported into the United States in such quantities as to threaten to impair the national security."[14]

In relation to amendment Number 29, it was the understanding of all the conferees, both House and Senate, that it was not intended to, and did not diminish or impair any authority the President may have under other law.[15]

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[13] S. Rep. No. 232, 84th Cong., 1st Sess. 1 (1955).

[14] Conf. Rep. No. 745, 84th. Cong., 1st Sess. 1 (1955).

[15] Id.

It was emphasized that if the President saw fit to stockpile critical materials under any other law, that action could be taken wholly aside from the authority contained in this amendment. Conversely, action under this provision could be taken wholly aside from the authority contained in any other law. It was also the understanding of all the conferees that the authority granted to the President under this provision is a continuing authority and that prior action taken under this provision may be modified, suspended or terminated in the light of changed circumstances.[16]

Section 7 of the law as finally enacted provided:

> Section 2 of the Act entitled 'An Act to Extend the Authority of the President to enter into trade agreements under section 350 of the Tariff Act of 1930, as amended', approved July 1, 1954 (19 U.S.C., Sec. 1352a) is hereby amended by inserting "a" after Sec. 2, and by adding at the end thereof a new subsection as follows:
>
> (b) In order to further the policy and purpose of this section, whenever the Director of the Office of Defense Mobilization has reason to believe that any article is being imported into the United States in such quantities as to threaten to impair the national security, he shall so advise the President, and if the President agrees that there is reason for such belief, the President shall cause an immediate investigation and report to him of the findings and recommendations made in connection therewith; if the President finds that the article is being imported into the United States in such quantities as to threaten to impair the national security, he shall take such action as he deems necessary to adjust the imports of such article to a level that will not threaten to impair the national security.[17]

The Trade Agreements Extension Act of 1958

During the spring and summer months of 1958 the question of the President's authority to enter into trade agreements arose again. House report Number 1761 of May 12, 1958, pointed out that H. R. 12591

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[16] Id.

[17] The Trade Agreements Extension Act of June 21, 1955, ch. 169, §7, 69 Stat. 162.

made a number of modifications in the existing provisions of law on trade agreements as related to national security.[18] Under the House bill the Director of the Office of Defense Mobilization was directed under specified circumstances, to make an appropriate investigation to determine the effects on the national security, of imports of an article. If, as a result of such an investigation, the Director was of the opinion that the article was being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, he was to promptly so advise the President and, if the President determined that the article was being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, he was to take such action, and for such time as he deemed necessary to adjust the imports of such article so that such imports would not threaten to impair the national security.[19]

As noted in Senate Report Number 1838 of July 15, 1958, the Senate Finance Committee accepted the section of H.R. 12591 relating to the national security but amended it for the express purpose of strengthening it and increasing its effectiveness.[20] The language concerning national security provided that in the administration of those provisions if the President is advised by the Director that, as a result of his investigation, the Director is of the opinion that the

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[18] H.R. Rep. No. 1761, 85th Cong., 2d Sess., 1(1958).

[19] H.R. 12591, 85th Cong., 2d Sess., (1958).

[20] S. Rep. No. 1838, 85th Cong., 2d Sess., 1(1958).

article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, the President shall take the required action unless he determines that the article and its derivatives is not being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.

As pointed out in Conference Report Number 2502 of August 6, 1958, accompanying the bill, the House receded on this point.[21]

Section 8 (a) of the bill as passed by the House added a new subsection (c) to section 2 of the Act of July 1, 1954. This subsection provided that the Director of the Office of Defense Mobilization and the President should, in the light of the requirements of national security and without excluding other relevant factors, give consideration to certain stated aspects. The Senate retained subsection (c) but added a new sentence which stated that the Director and the President should:

> further recognize the close relationship of the economic welfare of the nation and our national security, and should take into consideration the impact of foreign competition on the economic welfare of individual domestic industries and any unemployment decrease in revenues of government, loss of skill or investment, or other serious effects resulting from the displacement of any domestic products by excessive imports shall be considered, without excluding other factors, in determining whether such weakening of our internal economy may impair the national security.[22]

To this the House receded with an amendment inserting the word "substantial" directly in front of the word unemployment.

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[21] Conf. Rep. No. 2502. 85th Cong. 2d Sess., 1(1958).

[22] Id..

Section 8 of the law as finally enacted provided:

(a) Section 2 of the Act entitled 'An Act to extend the authority of the President to enter into trade agreements under Section 350 of the Tariff Act of 1930, as amended,' approved July 1, 1954, as amended by section 7 of the Trade Agreements Extension Act of 1955 (19 U.S.C., sec. 1352a) is amended to read as follows:

'Sec. 2. (a) No action shall be taken pursuant to Section 350 of the Tariff Act of 1930, as amended (19U.S.C., sec. 1351), to decrease the duty on any article if the President finds that such reduction would threaten to impair the national security.'

'(b) Upon request of the head of any Department or Agency, upon application of an interested party, or upon his own motion, the Director of the Office of Defense and Civilian Mobilization (hereinafter in this section referred to as the 'Director') shall immediately make an appropriate investigation, in the course of which he shall seek information and advice from other appropriate Departments and Agencies, to determine the effects on the national security of imports of the article which is the subject of such request, application, or motion. If, as a result of such investigation, the Director is of the opinion that the said article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, he shall promptly so advise the President, and, unless the President determines that the article is not being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security as set forth in this section, he shall take such action, and for such time, as he deems necessary to adjust the imports of such article and its derivatives so that such imports will not so threaten to impair the national security.'

'(c) For the purposes of this section, the Director and the President shall, in the light of the requirements of national security and without excluding other relevant factors, give consideration to domestic production needed for projected national defense requirements, the capacity of domestic industries to meet such requirements, existing and anticipated availabilities of the human resources, products, raw materials and other supplies and services essential to the national defense, the requirements of growth of such industries and such supplies and services including the investment, exploration, and development necessary to assure such growth, and the importation of goods in terms of their quantities, availabilities, character, and use as those affect such industries and the capacity of the United States to meet national security requirements. In the administration of this section, the Director and the President shall further recognize the close relation of the economic welfare of the Nation to our national security, and shall take into consideration the impact of foreign competition on the economic welfare of individual domestic industries; and any

substantial unemployment, decrease in revenues of government, loss of skills or investment, or other serious effects resulting from the displacement of any domestic products by excessive imports shall be considered, without excluding other factors, in determining whether such weakening of our internal economy may impair the national security.'

'(d) A report shall be made and published upon the disposition of each request, application or motion under subsection (b). The Director shall publish procedural regulations to give effect to the authority conferred on him by subsection (b).'

'(e) The Director, with the advice and consultation of other appropriate Departments and Agencies and with the approval of the President, shall by February 1, 1959, submit to the Congress a report on the administration of this section. In preparing such a report, an analysis should be made of the nature of projected national defense requirements, the character of emergencies that may give rise to such requirements, the manner in which the capacity of the economy to satisfy such requirements can be judged, the alternative means of assuring such capacity and related matters.'

(b) The amendment made by subsection (a) shall not affect any action taken or determinations made before the date of the enactment of this Act.[23]

The Trade Expansion Act of 1962

When the trade matter came on again for consideration in 1962, H.R. 11970 made no modification of substance to the security provisions of the Trade Agreements Extension Act of 1958 which would affect the oil import situation.[24] House Report Number 1818 of June 12, 1962, accompanying H. R. 11970 scarcely mentions the subject.[25]

Senate Report Number 2059 of September 14, 1962, indicted H.R. 11970 retained the national security provisions of the present Act governing the authority of the President to take action to adjust the

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[23] The Trade Agreements Extension Act of August 20, 1958, P.L. No. 85 - 686, §8, 72 Stat. 673.

[24] H.R. 11970, 87th Cong., 2d Sess. (1962).

[25] H.R. Rep. No. 11970, 87th Cong., 2d Sess., 1(1962).

level of imports when he finds they threaten to impair the national security.[26] The Senate proffered no security amendments of its own to the House bill and these provisions were not discussed in Conference Report Number 2518 of October 2, 1962.[27]

Section 232 of the law as finally enacted provides:

> (a) No action shall be taken pursuant to section 201(a) or pursuant to section 350 of the Tariff Act of 1930 to decrease or eliminate the duty or other import restriction on any article if the President determines that such reduction or elimination would threaten to impair the national security.
>
> (b) Upon request of the head of any department or agency, upon application of an interested party, or upon his own motion, the Director of the Office of Emergency Planning (hereinafter in this section referred to as the "Director") shall immediately make an appropriate investigation, in the course of which he shall seek information and advice from other appropriate departments and agencies, to determine the effects on the national security of imports of the article which is the subject of such request, application, or motion. If, as a result of such investigation, the Director is of the opinion that the said article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, he shall promptly so advise the President, and unless the President determines that the article is not being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security as set forth in this section, he shall take such action, and for such time, as he deems necessary to adjust the imports of such article and its derivatives so that such imports will not so threaten to impair the national security.
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> (c) For the purposes of this section, the Director and the President shall, in the light of the requirements of national security and without excluding other relevant factors, give consideration to domestic production needed for projected national defense requirements, the capacity of domestic industries to meet such requirements, existing and anticipated availabilities of the human resources, products, raw materials, and other supplies and services essential to the national defense, the requirements of growth of such industries and such supplies and services including the investment exploration, and development necessary to assure such growth, and the importation of goods in terms of their quantities,

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[26] S. Rep. No. 2059, 87th Cong., 2d Sess. 1(1962).

[27] Conf. Rep. No. 2518, 87th Cong., 2d Sess. 1(1962).

> availabilities, character, and use as those affect such industries and the capacity of the United States to meet national security requirements. In the administration of this section, the Director and the President shall further recognize the close relation of the economic welfare of the Nation to our national security, and shall take into consideration the impact of foreign competition on the economic welfare of individual domestic industries; and any substantial unemployment, decrease in revenues of government, loss of skills or investment, or other serious effects resulting from the displacement of any domestic products by excessive imports shall be considered, without excluding other factors, in determining whether such weakening of our internal economy may impair the national security.
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> (d) A report shall be made and published upon the disposition of each request, application or motion under subsection (b). The Director shall publish procedural regulations to give effect to the authority conferred on him by subsection (b).[28]

Although the Trade Agreements Expansion Act of 1962 continues to be cited as valid authority today for the President's Oil Import Program, it has not been extended and does not appear to be in effect. Trade legislation has been introduced and hopefully will pass the Congress this year.

Since its passage in 1962, Section 8 of the Trade Agreements Expansion Act of 1962 has remained unaltered with two minor exceptions. The name of the Office of Emergency Planning was changed to the Office of Emergency Preparedness.[29] After October 21, 1968, references to the Office of Emergency Planning in any other law were deemed references to the Office of Emergency Preparedness.

Subsequently in Reorganization Plan No. 1 of 1973[30], which was

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[28] The Trade Expansion Act of October 11, 1962. P.L. No. 87 - 794 §232, 76 Stat. 872. 19 U.S.C. §1862 (1971). 19 U.S.C.A. §1862 (1972).

[29] The Act of October 21, 1968. P.L. No. 90 - 608, ch. IV, §402 82 Stat 1194.

[30] 38 Fed. Reg. 9579 (1973).

submitted to Congress for its approval under the Reorganization Act,[31] President Nixon abolished the Office of Emergency Preparedness and transferred its functions and those of its Director to the President.

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[31] The Reorganization Act of June 20, 1949, ch. 226, § 1 - 11, 63 Stat. 203. 5 U.S.C. §901 (1971). 5 U.S.C.A. §901 (1972).

CHAPTER IV

STRUCTURAL PROCLAMATIONS

Toward a Mandatory Import Program

The Special Committee to Investigate Crude Oil Imports in its June 4, 1958, Report on Imports of Petroleum Products formally recognized circumvention of the voluntary import program through the uncontrolled importation of distilled products.[1] Later, during July of 1958 the administrator included unfinished oils within the scope of the program.

With the decline of the price of crude oil during the last half of 1958, criticism of the voluntary program continued. Discontent was voiced by the Independent Petroleum Association of America about the rising import/production ratio. A summons and complaint was filed by Eastern States Petroleum and Chemical Company when its non-compliance with the voluntary oil import program brought a military refusal to accept contracted products. On the Congressional front, bills requiring compulsory governmental licensing of importers were introduced by Senator Russell B. Long of Louisiana and Congressman Frank Ikard of Texas. Had these bills not died there would have been a legislative conversion of the program from voluntary to mandatory.

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[1] Special Cabinet Committee to Investigate Crude Oil Imports 1957-1958, Sinclair Weeks, Chairman. Report on Imports of Petroleum Products, (Washington, D.C.; The White House, June 4, 1958.)

On January 22, 1959, the Secretary of State and the Deputy Secretary of Defense wrote Leo A. Hoegh, the Director of the Office of Civil and Defense Mobilization, requesting that he conduct an investigation of imports of crude oil and its derivatives under Section eight of the Trade Agreements Extension Act of 1958, for the purpose of determining the effects of imports on national security. The investigation which began at once was concluded on February 27, 1959, as follows:

In view of the findings of the Director of Civil and Defense Mobilization, the President's Special Committee to Investigate Crude Oil Imports recommended on March 6, 1959:

> that the Voluntary Oil Import Program be replaced by a mandatory program which will limit the imports of crude oil and certain derivatives to such levels as the national security requires and will allocate such imports as are authorized among companies in a fair and equitable manner.[2]

The Committee's report also contained some sixteen specific recommendations concerning the Mandatory Program. It is obvious that these recommendations were closely adhered to in drafting Presidential Proclamation 3279.

In a March 10, 1959, White House press release President Eisenhower announced the Mandatory Oil Import Program. The oil industry in general was commended for its compliance with the Voluntary Program, but the actions of some companies who made the mandatory program necessary were regretted. The new program had as its objective the insurance of a "stable, healthy industry in the United States capable of exploring for and developing new hemisphere reserves to replace those

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[2] Special Cabinet Committee to Investigate Crude Oil Imports 1957-1958, Lewis L. Strauss, Chairman, Report (Washington, D.C.: The White House, March 6, 1959).

being depleted." Its basis was declared to be "the certified requirements of national security." In addition the program was designed to "prevent severe dislocations" in the oil industry at home and abroad. Finally, the Director of the Office of Civil and Defense Mobilization was to maintain continual surveillance over the program and in the event that petroleum prices increased while the program was in effect, the Director was to determine whether such price increases were necessary to accomplish the national security objectives of the proclamation.[3]

Presidential Proclamation 3279 of March 10, 1959

President Dwight D. Eisenhower issued Presidential Proclamation 3279 adjusting Imports of Petroleum and Petroleum Products into the United States, thus establishing the Mandatory Oil Import Program on March 10, 1959.[4]

The Proclamation consisted of five recitals and nine sections.

The recitals cited first the investigation and determination of the Director of the Office of Civil and Defense Mobilization; second, the considered opinion of the President; third, the finding of the President that adjustment of imports was required for national security; fourth, the division of the country by the President into two areas and five subdivisions; and fifth, a consideration of the Puerto Rican import situation.

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[3] James C. Hagerty, press release, Presidential Proclamation Adjusting Imports of Petroleum and Petroleum Products into the United States, 1959 Statement by the President (Washington D.C.: The White House, March 10, 1959).

[4] Presidential Proclamation No. 3279, March 10, 1959, 24 Fed. Reg. 1781, 3 C.F.R., 1959 - 1963 Comp., p. 11.

The first recital stated that the Director of the Office of Civil and Defense Mobilization had made an investigation of the impact of crude oil and products on national security and had considered the other matters, which he was required to consider, pursuant to Section 2 of the Act of July 1, 1954, as amended, and had then advised President Eisenhower of his opinion "that crude Oil and the principal crude oil derivatives and products are being imported in such quantities and under such circumstances as to threaten to impair the national security."[5]

The second recital indicated that the President had considered the matters required to be considered by him and agreed with the advice.[6]

In the third recital President Eisenhower found and declared that adjustments had to be made to the imports of crude oil, unfinished oils, and finished products so that such imports would not threaten to impair the national security.[7]

In the fourth recital, President Eisenhower found and declared that there were two areas in the continental United States -- one, east of the Rocky Mountains (District I -- IV) in which there was substantial oil production capacity in excess of actual production, and the other West of the Rocky Mountains (District V) in which production was declining, and in which, due to the absence of any significant interarea flow of oil, limited imports were necessary to meet demand -- and that therefore imports into such areas must be treated differently to avoid

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[5] Id.

[6] Id.

[7] Id.

discouragement of and decrease in domestic oil exploration development and production to the detriment of the national security.[8]

In the fifth and final recital, President Eisenhower found and declared that Puerto Rico depended on oil imports and that any system of adjustment should permit imports adequate for local consumption, export, and limited shipment of finished products to the United States.[9]

The body of Proclamation 3279 was predicated on the authority granted in Section 2 of the Act of July 1, 1954, as amended. It consisted of nine sections.

The sections provided first for an allocation and licensing procedure, second for the establishment of maximum levels of imports, third for implementing regulations, fourth for an appellate procedure, fifth for reporting requirements, sixth for price surveillance by the Director of the Office of Civil and Defense Mobilization, seventh for delegation of authority by the Secretary of Interior, eighth for a revocation of Executive Order 10761, and ninth for definitions.

Section one was divided into three subsections. Subsection (a) provided that after March 11, 1959, no finished products could be entered in Districts I - IV, District V, and Puerto Rico for consumption except, first, by a person to whom an allocation and a license has been issued by the Secretary of the Interior. The second exception referred to subsection (b) of Section one which allowed temporary

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[8] Id.

[9] Id.

entries and withdrawals under the Secretary's conditions until he could make allocations and issue licenses. These temporary allocations would then be deducted from later allocations. The third exception stated that with respect to finished products government agencies would not be required to have a license but would be subject to subsection (c) of Section one which provided they should not import products in excess of allocations made by the Secretary within the maximum level of imports established in Section two.[10]

Section two was divided into six subsections. Subsection (a)(1) fixed the maximum level of imports into Districts I - IV of crude oil, unfinished oils and finished products, except residual fuel oil to be used as fuel at nine percent of total demand in those Districts as estimated by the Bureau of Mines for periods fixed by the Secretary. Within this level imports of unfinished oils would not exceed ten percent of the imports of crude oil and unfinished oils, and finished products exclusive of residual fuel oil to be used as fuel would not exceed their 1957 district level of imports. In a separate subsection (a)(2) residual fuel oil to be used as fuel in Districts I - IV would not exceed its 1957 level of imports. Subsection (b) fixed the maximum level of imports of crude oil, unfinished oils and finished products into District V at an amount which together with domestic production and supply would approximate total demand in that District as estimated by the Bureau of Mines for periods fixed by the Secretary. Within this maximum level of

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[10] Id. at §1.

imports, imports of unfinished oils would not exceed ten percent of the imports of crude oil and unfinished oils and finished products would not exceed their 1957 District level of imports. Subsection (c) permitted imports of crude in addition to the maximum established in subsections (a) and (b) to meet the minimum requirements of refiners and pipeline companies which were unable to obtain enough domestic crude by ordinary means. Subsection (d) fixed the maximum level of imports of crude oil, unfinished oils and finished products into Puerto Rico at approximately the level of imports into Puerto Rico during all or part of 1958 as determined by the Secretary or such lower or higher levels as the Secretary may determine are needed to meet increases or decreases in local or foreign demand. Subsection (e) authorized the Secretary of the Interior to review imports into Districts I - IV and District V of residual fuel oil to be used as fuel and make adjustments to the maximum level of imports. Subsection (f) excepted withdrawals pursuant to Section 309 of the Tariff Act of 1930 as amended from the demand referred to and levels established.[11]

Section three was divided into three subsections. Subsection (a) authorized the Secretary of the Interior to issue implementing regulations consistent with the levels established in the Proclamation and providing for a system of allocation, licensing and restriction on the transfer of allocations and licenses. Subsection (b) was divided into four parts. The first part states that the regulations shall provide with respect to the allocations of imports of crude oil and un-

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[11] Id. at 82.

finished oils into Districts I - IV and into District V, for an equitable distribution among persons having refinery capacity in these districts in relation to refinery inputs during an appropriate period or periods selected by the Secretary and distributed so as to avoid drastic reductions below the last allocations under the Voluntary Oil Import Program. The regulations shall also provide allocations of crude oil to persons having operating refinery capacity or having pipeline facilities under certain circumstances who demonstrate inability to obtain sufficient quantities of domestic crude by ordinary means. The second part states that the regulations shall provide for the allocation of imports of crude and unfinished oils into Puerto Rico on the basis of refinery inputs during all or part of 1958 as determined by the Secretary. The third part states that the regulations shall require imported crude and unfinished oils be processed in the licensee's refinery except that exchanges may be made if effected on a current basis and reported in advance to the Secretary and if domestic crude or unfinished oils are processed. However, those receiving allocations on the basis of inability to obtain sufficient domestic crude shall not be allowed to make exchanges. The fourth part states that with respect to the allocations of imports of finished products into Districts I - IV, District V and Puerto Rico, such regulations shall result in an equitable distribution among importers of finished products during the respective base periods specified in Section two of the Proclamation. Subsection (C) states that the regulations may provide for the revocation or suspension by the Secretary of any allocation or license on grounds relating to National security or violation of the proclamation,

regulations, or license.[12]

Section four authorized the Secretary of the Interior to establish and operate an Appeal Board consisting of members from the Departments of Interior, Defense, and Commerce who hold a position of Deputy Assistant Secretary or higher to be appointed by the heads of the departments within the limits of the maximum levels. On the grounds of hardship, error, or other relevant special consideration, the board was empowered to modify any allocation, to grant allocations of crude and unfinished oils to persons with prior importing histories who do not qualify for allocations and to review revocations and suspensions.[13]

Section five required that persons who applied for or were granted allocations furnish the Secretary of the Interior such information as he may require..[14]

Section six was divided into two subsections. Subsection (a) charged the Director of the Office of Civil and Defense Mobilization to maintain constant surveillance of petroleum imports and to inform the President after consultation with the Secretaries of State, Defense, Treasury, Interior, Commerce, and Labor of the need for further action. Included in this advice was to be a decision as to whether further price increases were required for national defense programs. Subsection (b) discharged the Special Committee to

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[12] Id. at §3.

[13] Id. at §4.

[14] Id. at §5..

Investigate Crude Oil Imports from its responsibilities.[15]

Section seven authorized the Secretary of the Interior to delegate and redelegate his authority under the Proclamation. Additionally it required all agencies of the Executive branch to cooperate with the Secretary in the execution of the Proclamation.[16]

Section eight revoked Executive Order 10761 of March 27, 1958.[17]

Section nine defined the terms "person", "Districts I - IV", "District V", "crude oil", "unfinished oils" and "finished products".[18]

To Amendment 25 and Beyond

Less than two months elapsed between the issuance of Proclamation 3279 and Proclamation 3290, the first of more than twenty five amendments which followed. On April 30, 1959, pursuant to a specific finding that the adjustments made would not threaten to impair national security, President Eisenhower excepted crude oil, unfinished oils and finished products transported overland into the United States from the country where produced, from Proclamation 3279. Levels of authorized imports were not to include excepted overland imports in the future. In addition allocations were not to be reduced by overland imports except for District V, and unless the President found and notified the Secretary of Interior that reduction was necessary

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[15] Id. at §6.

[16] Id. at §7.

[17] Id. at §8. See also Executive Order No. 10761, March 27, 1958, 23 Fed. Reg. 2067, 3 C.F.R., 1954-1958 Comp. p. 409.

[18] Id. at §9.

to prevent total imports from seriously impairing the accomplishment of the purposes of the proclamation. The language allowing imports of crude oil above maximum levels by persons having refineries or pipelines and using crude oil directly as fuel to meet minimum requirements which they were unable to meet by ordinary means, was dropped from Proclamation 3279. Finally, the Secretary of the Interior was allowed to authorize entries of small amounts of crude oil, unfinished oils and finished products without license.[19]

On December 10, 1959, President Eisenhower issued Presidential Proclamation 3328, the second amendment to Proclamation 3279. This modification reduced the quantities of authorized imports subject to allocation into District V. Moreover, it provided additional flexibility to the Secretary of the Interior with respect to imports of unfinished oils into District V. It also made the Secretary of the Interior responsible for reviewing the imports of residual fuel oil to be used as fuel. Finally, it empowered the Secretary of Interior to broaden the jurisdiction of the Oil Import Appeals Board with respect to petitions concerning finished products.[20]

In Proclamation 3386 of December 24, 1960, the third amendment to Proclamation 3279, President Eisenhower stated that further adjustments were necessary due to over and under estimates of total demand. In order to remedy this problem alterations were made which would

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[19] Presidential Proclamation No. 3290, April 30, 1959, 24 Fed. Reg. 3527, 3 C.F.R., 1959 - 1963 Comp., p. 20.

[20] Presidential Proclamation No. 3328, December 10, 1959, 24 Fed. Reg. 10133, 3 C.F.R., 1959 - 1963 Comp., p. 63.

allow nine percent of the difference between projected and actual demand for crude and unfinished oils in Districts I - IV to be added to or subtracted from the level for an allocation period in those Districts.[21]

Proclamation 3389 of January 17, 1961 was the fourth amendment to Proclamation 3279 and the last Eisenhower amendment. It was drafted to ensure adequate supplies of residual fuel oil to be used as fuel which would reach the users. In order to accomplish this objective the Secretary of the Interior was allowed to alter the system of allocating imports of residual fuel oil to be used as fuel into District I. Despite the historic 1957 level established, the Secretary of the Interior was authorized to adjust the maximum levels of residual fuel oil imports into Districts I - IV. Allocation of imports of other finished products into Districts I - IV and Puerto Rico were set up on a historic basis with room for adjustments through the Appeals Board procedures. This amendment also added definitions of District I and Districts II - IV.[22]

President Kennedy's Executive Order 11051 of September 28, 1962, modified Proclamation 3279 for the fifth time by substituting for each reference to the office of Civil and Defense Mobilization, a reference to the office of Emergency Planning.[23]

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[21] Presidential Proclamation No. 3386, December 24, 1960, 25 Fed. Reg. 13945, 3 C.F.R., 1959 - 1963 Comp., p. 102.

[22] Presidential Proclamation No. 3389, January 17, 1961, 26 Fed. Reg. 507, 811, 3 C.F.R., 1959 - 1963 Comp., p. 108.

[23] Executive Order No. 11051, September 27, 1962, 27 Fed. Reg. 9683, 3 C.F.R., 1959 - 1963 Comp., p. 635.

Proclamation 3279 was modified again for the sixth time on November 30, 1962, by Proclamation 3509 when President Kennedy determined that the maximum levels of imports required adjusting and that the system of allocation required revision. Under the new plan, which became effective January 1, 1963, the maximum level of imports into Districts I - IV of crude oil, unfinished oils and finished products except residual fuel oil to be used as fuel equaled 12.2 percent of the oil and natural gas liquids produced in these Districts during the period of six months ending six months prior to the allocation period minus exempt overland as estimated by the Secretary of the Interior. Regarding allocations of crude oils and unfinished oils into Districts I - IV, a new graduated scale concept was introduced. Regarding imports of residual fuel oil to be used as fuel into District I, a new graduated scale concept was also introduced. Finally the definition crude oil was amended to include liquids recovered which were not natural gas products and a new definition of natural gas products was added.[24]

Proclamation 3279 was amended for the seventh time on April 19, 1963, by Proclamation 3531 issued by President Kennedy. Proclamation 3531 simply omitted the requirement that Appeal Board members be of the rank of Deputy Assistant Secretary or higher.[25]

The eighth amendment to Proclamation 3279 and President Kennedy's last amendment was Proclamation 3541 issued on June 10, 1963.

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[24] Presidential Proclamation No. 3509, November 30, 1962, 27 Fed. Reg. 11985, 3 C.F.R., 1959 - 1963 Comp., p. 238.

[25] Presidential Proclamation No. 3531, April 19, 1963, 28 Fed. Reg. 4077, 3 C.F.R., 1959 - 1963 Comp., p. 279.

Proclamation 3541 provided that the calculation of the maximum level of authorized imports into Districts I - IV should be based on the Secretary of the Interior's current estimate of production during the allocation period and not on the basis of prior actual production as was previously done.[26]

In Proclamation 3693 of December 10, 1965, the ninth amendment to Proclamation 3279, restrictions were placed on the flow of crude oil, unfinished oils, and finished products into foreign trade zones. In addition, petrochemical plants were included with the import allocation system. Finally, in hopes of generating increased employment opportunities for Puerto Rico, an effort was made to encourage a petrochemical industry in Puerto Rico.. The definition of liquified gases was also redefined.[27]

Proclamation 3279 was modified for the tenth time on April 10, 1967 by President Johnson in Proclamation 3779. This amendment provided the Secretary of the Interior with added latitude with regard to imports of asphalt into all Districts and Puerto Rico. The Secretary was allowed, after reviewing the supply - demand situation, to establish a maximum level of imports of asphalt and also to establish a system of allocation of such imports or to allow entry without allocation or licenses.[28]

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[26] Presidential Proclamation No. 3541, June 10, 1963, 28 Fed. Reg. 5931, 3 C.F.R., 1959 - 1963 Comp., p. 291.

[27] Presidential Proclamation No. 3693, December 10, 1965, 30 Fed. Reg. 15459, 3 C.F.R., 1964 - 1965 Comp., p. 153.

[28] Presidential Proclamation No. 3779, April 10, 1967, 32 Fed. Reg. 5919, 3 C.F.R., 1966 - 1970 Comp., p. 114.

Proclamation 3794 was issued by President Johnson on July 24, 1967. It was the eleventh amendment to Proclamation 3279. Proclamation 3794 was designed to stimulate the production of low sulphur residual fuel oil in support of Federal, State, and local air pollution control rules and regulations. New importers were allowed into the program and provisions were made for allocations which would ensure adequate supplies of low sulphur residual fuel oil to be used as fuel.. The term residual fuel oil was also redefined.[29]

Proclamation 3279 was modified for the twelfth time on November 9, 1967, by President Johnson in Proclamation 3820. This amendment provided assistance in the development of petrochemical facilities in the Virgin Islands with the objective of increasing employment opportunities and upgrading the standard of living. To obtain this objective and added allocation of imports of up to 15,000 average barrels per day of finished products other than residual fuel oil to be used as fuel was allowed into Districts I - IV.[30]

On January 29, 1968, President Johnson issued Proclamation 3823. This was his last amendment to Proclamation 3279. Under Proclamation 3823 allocations of imports into Puerto Rico and shipments from Puerto Rico to Districts I - IV were made applicable with respect to District V. Proclamation 3823 provided authority for allocations based on exports of finished products and petrochemicals

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[29] Presidential Proclamation No. 3794, July 17, 1967, 32 Fed. Reg. 10547, 3 C.F.R., 1966 - 1970 Comp., p. 134.

[30] Presidential Proclamation No. 3820, November 9, 1967, 32 Fed. Reg. 15701, 3 C.F.R., 1966 - 1970 Comp., p. 165.

as well. Because of the Middle East crisis, the Secretary of the Interior was also permitted to make certain adjustments to allocations and licenses for imports of crude oil, unfinished oils and finished products. In addition, imports of liquids extracted from tar sands were determined to be petroleum imports and as such, subject to the provisions of Proclamation 3279. Finally "crude oil" was redefined and a definition of "petroleum oils" was included.[31]

In Proclamation 3969 of March 10, 1970, President Nixon modified Proclamation 3279 for the fourteenth time. Acting on the first recommendation from the Director of the Office of Emergency Preparedness, his newly established Oil Policy Committee and the Cabinet Task Force on Oil Import Control, the President imposed mandatory controls on Canadian oil imported into Districts I - IV. Imports of crude oil and unfinished oils into those Districts were restricted to 395,000 barrels per day effective March 1st for the duration of 1970. This action resulted in an increase of about 14,000 barrels per day over actual imports in 1969. The President simultaneously changed the composition of the Oil Import Appeals Board by substituting a Department of Justice member for the Department of Defense member.[32]

The fifteenth modification to Proclamation 3279 came when President Nixon issued Proclamation 3990 on June 17, 1970. This Proclamation increased the maximum level of imports of crude oil,

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[31] Presidential Proclamation No. 3823, January 29, 1968, 33 Fed. Reg. 1171 3 C.F.R., 1966 - 1970 Comp., p. 311.

[32] Presidential Proclamation No. 3969, March 10, 1970, 35 Fed. Reg. 4321, 3 C.F.R., 1966 - 1970 Comp., p. 470.

unfinished oils, and finished products into Districts I - IV by 100,000 barrels per day after March 1, 1970. This provision was designed to placate New England consumers and politicians and to expand markets for Venezuelan oil. 63,000 barrels per day of this had already been used by oil from Canada allowed in under Proclamation 3969. The remaining 37,000 barrels per day was given to the Oil Import Appeals Board and to the Oil Import Administration. Moreover, President Nixon authorized an additional 40,000 barrels per day of number two fuel oil to be imported by independent deep water terminal operators in District I during the last half of 1970. Thus in aggregate, the President had allowed imports into Districts I - IV of 140,000 barrels per day in excess of the existing formula.. Transportation to the United States of domestically produced or refined oils by pipeline through a foreign country, despite the possibility of some commingling, would also be allowed without license or allocation under regulations which the secretary was authorized to issue..[33]

Proclamation 4018 of October 16, 1970, modified Proclamation 3279 for the sixteenth time. In Proclamation 4018 President Nixon Authorized the importation without charge to import quotas of 14.6 million barrels (40,000 barrels per day) of number two fuel oil from Western Hemisphere sources during 1971 into District I by Independent deepwater terminal operators. These imports were subject to appropriate seasonal restrictions. Inland overwater importation of Canadian

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[33] Presidential Proclamation No. 3990, June 17, 1970, 35 Fed. Reg. 10091, 3 C.F.R., 1966 - 1970 Comp., p. 488.

crude oil, unfinished oils, and finished products produced in Canada were excepted from Proclamation 3279, Importation other than by sea of Canadian produced natural gas liquids was allowed without regard to the maximum level of imports. Importation of ethane, propane and butane produced in the Western Hemisphere, from crude or gas were permitted without deduction from crude or products quotas. This amounted to practical exemption. Crude oil was allowed to be imported into District I and Canadian crude oil was allowed to be imported into the United States to be topped for burner fuel under such conditions as the Secretary might specify by regulation. Finally crude oil for burner fuel was authorized to be imported under the same limitations applicable to residual fuel oil. This relaxed the restrictions on the viscosity requirements of crude oil used for burning by dropping the present floor below 45 SUS at 100 degrees Fahrenheit. The relaxation was accomplished by a redefinition of residual fuel oil.[34]

Proclamation 4025 was issued by President Nixon on December 22, 1970. It modified Proclamation 3279 for the seventeenth time by increasing licensed imports into Districts I - IV by approximately 100,000 barrels per day during 1971 by freeing importation and allocation in Districts I - IV and District V, from historical limitations and by authorizing Mexican imports to enter, overland or by water in such quantities as the Secretary of the Interior prescribes after annual discussions between the Governments of the

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[34] Presidential Proclamation No. 4018, October 16, 1970, 35 Fed. Reg. 16357, 3 C.F.R., 1966 - 1970 Comp., p. 512.

United States and Mexico. With the latter amendment, the President closed "el loophole" the infamous Brownsville turn around under which approximately 30,500 barrels per day of Mexican oil came by tanker into bonded storage in Brownsville, Texas. It was then trucked across the Rio Grande River into Mexico and then back across the border "overland". Also authorized was the importation of 450,000 barrels of crude per day into Districts I - IV from Canada. This amounted to an increase of 55,000 barrels per day. In addition, holders of overseas licenses were authorized to exchange them for tickets to enter Canadian oil. Imports of asphalt were decontrolled for the year 1971. Although the 12.2 percent import production ratio remained in Proclamation 3279, it had lost virtually all significance as a basis for determing maximum levels of imports into Districts I - IV.[35]

Proclamation 4092 of November 5, 1971 modified Proclamation 3279 for the eighteenth time. Under Proclamation 4092, President Nixon continued the provision authorizing the importation of Number two fuel oil into District I indefinitely into the future. He also allowed allocation holders to secure Number two fuel oil produced in Puerto Rico. Finally, he permitted the suspension of the requirement that Number two fuel oil be produced from Western Hemisphere crude oil in the Western Hemisphere.[36]

Proclamation 4099 of December 20, 1971, modified Proclamation

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[35] Presidential Proclamation No. 4025, December 22, 1970, 35 Fed. Reg. 19391, 3 C.F.R., 1966 - 1970 Comp., p. 520.

[36] Presidential Proclamation No. 4092, November 5, 1971, 36 Fed. Reg. 21397.

3279 for the nineteenth time. Pursuant to Proclamation 4099 President Nixon authorized a 1972 increase of approximately 100,000 barrels of licensed imports per day into the area east of the Rockies. Of the 100,000 barrel increase, 65,000 barrels were allowed in from Canada, raising the Canadian quota to 540,000 barrels daily. The remaining 35,000 barrels was to come from other foreign suppliers.[37]

Proclamation 4133 of May 11, 1972, modified Proclamation 3279 for the twentieth time. In Proclamation 4133 President Nixon allowed an additional 30,000 barrels per day of Canadian imports into Districts I - IV during the remainder of 1972. He also raised the basis from which the maximum level of imports into Districts I - IV is calculated 200,000 barrels per day. In total this adjustment alone accounted for fifteen percent boost.[38]

Proclamation 4156 of September 18, 1972, modified Proclamation 3279 for the twenty-first time. In Proclamation 4156 President Nixon allowed the Secretary of the Interior to allocate an additional 5000 barrels per day of Number two fuel oil on an annual basis during the remainder of 1972 to the independent deepwater terminal operators on the east coast. The President also allowed all importers of overseas oil and products into Districts I - IV to borrow against their calendar year 1973 allocations by up to ten percent of their regular

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[37] Presidential Proclamation No. 4099, December 20, 1971, 36 Fed. Reg. 24203.

[38] Presidential Proclamation No. 4133, May 11, 1972, 37 Fed. Reg. 9543.

1972 allocations made to them prior to September 1st of 1972.[39]

Proclamation 3279 was modified for the twenty-second time, on December 17, 1972, by Proclamation 4175. Acting on recommendations from the Director of the Office of Emergency Preparedness and with the advice of the Oil Policy Committee, President Nixon delegated authority in Proclamation 4175 to the Secretary of the Interior to provide interim allocations for the allocation period beginning January 1, 1973, and for succeeding allocation periods and to permit additional imports from the United States Virgin Islands.[40]

Proclamation 4178 of January 17, 1973, modified Proclamation 3279 for the twenty-third time. Citing domestic production, insufficiencies, and Number two fuel oil shortages, President Nixon:
First, established the import level for Districts I - IV at 2,700,000 barrels per day for crude, unfinished, and finished products, excluding residual. This compares with 1,785,000 barrels per day for 1972 after final adjustments.
Second, established the import level for District V at 800,000 barrels per day for 1973, compared with 717,000 barrels per day in 1972.
Third, suspended quota controls on imports of Number two heating oil (and diesel and some kerosene) for the period of January through

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[39] Presidential Proclamation 4156, September 18, 1972, 37 Fed. Reg. 19115.

[40] Presidential Proclamation No. 4175, December 16, 1972, 37 Fed. Reg. 28043.

April, 1973.

Fourth, included shale oil and gilsonite in the definition of crude oil for purposes of computing refinery throughputs on which import allocations are based.

Fifth, eliminated the requirement that the Secretary of the Interior issue permits for oil shipments into foreign trade zones.

And sixth, redefined the definition of liquified natural gas.[41]

Executive Order 11703 of February 7, 1973, amended Proclamation 3279 for the twenty fourth time. Under Executive Order 11703 President Nixon reconstituted the Oil Policy Committee appointing as chairman the Deputy Secretary of the Treasury in lieu of the Director of the Office of Emergency Preparedness. The Deputy Secretary was vested with the functions of the Director, including policy direction, co-ordination, and surveillance of the Oil Import Control Program.[42]

Proclamation 4202 of March 23, 1973, modified Proclamation 3279 for the twenty-fifth time. In Proclamation 4202 President Nixon empowered the Oil Import Appeals Board to take action without regard to the maximum levels of imports established by Proclamation 3279.[43]

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[41] Presidential Proclamation No. 4178, January 17, 1973, 38 Fed. Reg. 1719.

[42] Executive Order No. 11703, February 7, 1973, 38 Fed. Reg. 3579.

[43] Presidential Proclamation No. 4202, March 23, 1973, 38 Fed. Reg. 7977.

Fixing the Maximum Level of Imports Under the Mandatory Oil Import Program

Establishment of the maximum level of imports is considered a policy matter. As such the overall level is set in the form of a Presidential Proclamation. Under Proclamation 3279, prior to the quota-fee system, there were differences based upon where the imports came from, where they went to, and what kind of imports they were.

Because of the national security basis of the Mandatory Oil Import Program, the question of whether Canadian and Mexican imports were less secure than domestic production naturally arose. If Canadian and Mexican imports were allowed into this country, should they be included under the overall 12.2 percent level? Should separate quotas be established for Canada and Mexico? Were such imports, if exempt, included within the definition of refinery inputs in determining allocations of non-exempt offshore imports? The United States clearly vacillated over these questions.

Under Phase I of the Voluntary Oil Import Program, no maximum level was fixed for crude oil imports from Canada. Under Phase II of the Voluntary Oil Import Program and at the outset of the Mandatory Oil Import Program, imports from Canada were considered foreign and treated as offshore imports. Proclamation 3290 of April 30, 1959, provided an exception from the maximum level for overland imports.[44] Most Canadian imports were considered overland and thus within the exception. As Canadian imports rose so,too, did the controversy

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[44] Presidential Proclamation No. 3290, supra note 19.

surrounding them. Accordingly they were brought within the overall level first in District V by Proclamation 3328 of December 16, 1959, and subsequently in Districts I - IV by Proclamation 3509 of November 30, 1962. Negotiations with the Canadian government regarding the level of imports resulted in a secret agreement in 1967. The agreement, in the form of a note from the Canadian Ambassador, obligated the Canadian government to "ensure, short of imposing formal export controls, that exports of refinery feedstocks . . . to Districts I - IV do not exceed 280,000 b/d in 1968" and that the rise in such exports would not "exceed 26,000 b/d per annum." Lacking enforcement provisions, the agreement was doomed to failure as Canadian imports continued to rise.

From the Canadian point of view, Canada had oil import problems of its own. Canada's populous eastern provinces were chronic deficit areas, while it unpopulated western provinces were surplus areas. After the western producers pressed for protection from cheap easterm imports, the Canadian government decided to divide the country by a north - south "energy line" drawn roughly through the Ottowa valley. No eastern importers were allowed to sell gasoline west of the line. This resulted in a two price system within the country.. A licensing procedure was used to maintain the "energy line".

American producers were opposed to Canada's importing oil to its eastern refineries at approximately the same rate it was exporting its western production to the United States. Therefore on March 10, 1970, President Nixon imposed mandatory controls on Canadian oil imported into Districts I - IV. Pursuant to this Proclamation,

imports of crude and unfinished oils were limited to 395,000 barrels per day.[45]

This level was subsequently increased, first to 450,000 barrels per day on December 22, 1970, by Proclamation 4025, then to 540,000 barrels per day on December 20, 1971, by Proclamation 4099, and finally to 570,000 barrels per day on May 11, 1972 by Proclamation 4133.[46]

The overland exemption was interpreted to exclude shipments from Canada across the Great Lakes and rail shipments from Canada to Ketchikan which crossed an inland waterway by carferry. This interpretation seemed a bit inconsistent with the "Brownsville loop." Proclamation 4018 of October 16, 1970, remedied the situation, however, by authorizing inland overwater imports from Canada.[47]

From the beginning it was decided that Canadian crude processed through American refineries would be excluded from the calculation of "refinery inputs." The effect of this decision was to diminish refiner offshore quotas in a direct proportion to the amount of Canadian crude used. This rule changed with respect to licensed Canadian imports in October, 1971; but it remained the same for unlicensed Canadian imports such as finished products, natural gas liquids and imports of crude into District V.

Tariffs were considered applicable to Canadian imports.

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[45] Presidential Proclamation No. 3969, supra note 32.

[46] Presidential Proclamation No. 4025, supra note 35. See Presidential Proclamation No. 4099, supra note 37. See also Presidential Proclamation No. 4133, supra note 38.

[47] Presidential Proclamation No. 4018, supra note 34.

Although the 1970 Cabinet Task Force on oil import control suggested continuing Canadian imports as exempt if a common energy accord could be reached, and although efforts to implement that recommendation have been made, the Canadians show no inclination to include a provision limiting offshore imports into their country which presumably would be required. Thus Canada currently continues to import approximately as much offshore oil as it exports to the United States. The security and economic basis for allowing this to continue are at least questionable. More recently Canada has decided to limit petroleum exports to the United States.

Unlike Canadian imports, Mexican imports were not specifically excepted in Phase I of the Voluntary Oil Import Program. In a like manner under Phase II of the Voluntary Oil Import Program and at the outset of the Mandatory Oil Import Program, imports from Mexico were considered foreign and treated as offshore imports. Proclamation 3290 of April 30, 1959, provided an exception from the maximum level for overland imports. Mexican imports were of course included within the exception.[48]

The overland exemption did not present as much a problem with Mexican imports as with Canadian imports since there were no pipeline connections between the Mexican producing areas and American consuming areas. In fact an elastic imagination was required to qualify Mexican imports as exempt overland imports. Under an arrangement originally dreamed up by the State Department to discourage Mexican exports to Cuba, Mexican oil was allowed to be shipped by ocean

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[48] Presidential Proclamation No. 3290, supra note 19.

tanker from Tampico, Mexico, to Brownsville, Texas, where it was landed in bond, loaded on a truck, hauled across the Mexican boarder and then"overland" back into the United States where it was reloaded on the same ship, and then shipped to the east coast. Approximately 30,000 barrels per day of imports were involved. These imports consisted sometimes of crude and sometimes of unfinished oils. Proclamation 4025 of December 23, 1970, eliminated the Brownsville turn around by authorizing Mexican imports to enter overwater.[49] But the question then became -- Why should not Venezuelan oil be treated the same as Mexican oil? Mexican imports are currently limited by intergovernmental accord. On August 5, 1971, the Secretary of the Interior mailed a letter to the Mexican Ambassador, agreeing to the continuance of the 30,000 barrels per day of unlicensed imports to be shipped through Brownsville and allowing an additional 2500 barrels per day of unlicensed imports to be entered anywhere in the United States. It is believed that during 1972 there was an additional 3500 barrels per day allowed in for an overall total of 36,000 barrels per day from Mexico.

No allocations were made and no licenses were needed to import from Mexico. Mexican imports were not counted as refinery inputs in computing allocations.

Tariffs were applicable to Mexican imports.

Under the Mandatory Oil Import Program, the Secretary of the Interior set the maximum level of imports of crude and unfinished oils into Puerto Rico. The levels of imports of finished products into

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[49] Presidential proclamation No. 4025, supra note 35.

Puerto Rico were based on levels of imports of finished products during the last half of 1958. At the outset of the Mandatory Oil Import Program, finished product imports from Puerto Rico to the United States were not limited. Pursuant to Proclamation, however, the Secretary of the Interior was vested with certain discretion in respect to the establishment of Puerto Rican import levels. This discretion was based upon increases or decreases in local demand in Puerto Rico or demand for export to foreign areas. There was thus an indirect type of control over imports to the United States. During 1972, 37,978 barrels per day of crude oil, unfinished oils and finished products are allowed into Districts I - IV and District V from Puerto Rico.

Proclamation 3820 of November 9, 1967, allowed the Virgin Islands to import 15,000 barrels per day of finished products into Districts I - IV.[50] This amount is subtracted from the overall level of imports into District I - IV.

During World War II the United States was divided into five separate districts for purposes of petroleum administration. These same districts were used under both Phases of the Voluntary Oil Import Program and continue in use today by the Office of Oil and Gas in administering the Mandatory Oil Import Program. Districts I - IV consist of all the states east of the Rocky Mountains. District V consists of all the states west of the Rockies, including Alaska and Hawaii. Puerto Rico and the Virgin Islands are treated separately.

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[50] Presidential Proclamation No. 3820, supra note 30.

Under the Voluntary Oil Import Program no maximum level of imports was established. It was hoped, however, that the voluntary program would restrict imports into Districts I - IV to approximately twelve percent of domestic crude oil production or about 9.6 percent of demand. Imports into District V were not limited.

Under the Mandatory Oil Import Program, the maximum level of imports of crude oil, unfinished oils, and finished products - except residual fuel oil to be used as fuel into Districts I - IV -- was fixed at nine percent of total demand in those districts as estimated by the Bureau of Mines. Within that level imports of unfinished oils could not exceed ten percent of the permissible imports of crude oil and unfinished oils. Also within that level imports of finished products would not exceed their 1957 historical level of imports. Residual fuel oil to be used as fuel was considered separately. Imports of residual fuel oil to be used as fuel into Districts I - IV could not exceed the 1957 historical level of imports.

In Proclamation 3509 of November 30, 1962, President Kennedy connected the maximum level of imports to domestic production instead of domestic demand. Proclamation 3509 provided that for a particular allocation period, the maximum level of imports for Districts I - IV should be based on 12.2 percent of production in those Districts for the same period the preceding year.[51]

The following year on June 10, 1963, in Proclamation 3541, President Kennedy related the maximum level of imports into Districts

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[51] Presidential Proclamation No. 3509 supra note 24.

I -- IV to 12.2 percent of current domestic production as estimated by the Secretary of the Interior.[52] As of 1970 it could generally be stated that the maximum level of imports as established in percentage terms had not varied significantly since the inception of the Mandatory Oil Import Program. This was true despite the springing up of a plethora of subcatagories within the maximum level, some of which had been used as accommodations. The singular exception was the decontrol of residual fuel oil imports into the East Coast. By 1972, however, although the 12.2 percent basis was still nominally referred to in Proclamation 3279, total allocations were running approximately 500,000 barrels per day in excess of that level. The quota for offshore imports was set at 1,064,700 barrels per day of crude oil, unfinished oils and finished products into Districts I - IV.

Because it was considered a deficit production area, a different method of arriving at a maximum level was used in District V. In essence the formula called for subtraction of total domestic production plus Canadian overland imports from total domestic demand for crude and products. Both domestic production and demand were estimated by the Secretary of the Interior. These estimates have proven substantially accurate.

Oil imports may be conveniently catagorized into crude oil, unfinished oils, and finished products. The three catagories are lashed together by a common ceiling.

"Unfinished oils" are products, but the existing regulations

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[52] Presidential Proclamation No. 3541, supra note 26.

classify them as products imported for further processing. What constitutes processing is a potentially difficult problem although it has not yet provoked controversy. Unfinished oils differ from finished products which are imported for consumption without further processing. Under the Voluntary Oil Import Program, unfinished oil imports were not subject of maximum levels. Under the Mandatory Oil Import Program, unfinished oils may be imported under a crude license to a maximum of fifteen percent of the license in Districts I - IV and twenty-five percent in District V. Petrochemical producers may use all of their crude licenses to import unfinished oils they would use as feedstocks. In practice this did not happen, however. Licenses were used for the importation of crude which was then exchanged for domestic natural gas liquids.

Under the Voluntary Oil Import Program product imports were not subject to maximum levels. Under the Mandatory Oil Import Program product imports were only permitted on a historic basis. Because they tend to "export" refining capacity, imports of products have been discouraged. Proclamation 4025 of December 22, 1970, eliminated historic quotas.[53] Finished products were then imported under a crude license to a maximum of one percent of the license in all Districts. Although Number 2 fuel oil and residual fuel oil were products, they were treated separately. A maximum level of 45,000 barrels per day of Number 2 fuel oil was allowed into District I by the President in 1972. In essence there was no ceiling on residual

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[53] Presidential Proclamation No. 4025, supra note 35.

fuel oil imports into District I. A maximum level of 14,000,000 barrels per year of residual fuel oil was allowed into Districts II - IV by the Secretary of the Interior in 1972. Fuel oil imports will be studied more comprehensively below.

Description of the Proclamation as Presently Amended

On April 18, 1973, President Nixon issued Proclamation 4210.[54] In this, his latest and most extensive modification of Proclamation 3279, he set the maximum level of imports for Districts I - IV, District V, and Puerto Rico at the difference between estimated supply and estimated demand.[55] Effective May 1, 1973, Mr. Nixon abolished volumetric controls on oil imports by allowing unlimited oil imports to enter the United States merely upon application payment of fees and issuance of a license. Fees for products are set substantially higher than those for crude.[56] Present participants will receive allocations until phased out, free from license fees.

License fees will gradually increase over the next three years. The retention of quotas on a phased out basis should provide some exchange value for quota ticket holders. The maximum levels of imports subject to allocation and license which are exempt from fees, will gradually decrease over the next seven years until April 30, 1980, when no allocations for quotas will be granted without payment of license fees.[57] Tariffs on imports of petroleum and products are

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[54] Presidential Proclamation No. 4210, April 18, 1973, 38 Fed. Reg. 9645.

[55] Id. at §2.

[56] Id. at §3.

[57] Id. at §11.

suspended.[58] Imports of crude and products into Puerto Rico are subject to license fees.[59] Exports from Puerto Rico are license fee exempt. Conversely, imports of crude and products into the Virgin Islands and free trade zones would be license fee exempt while exports from the Virgin Islands and free trade zones to the United States would be subject to fees.[60] The full text of Proclamation 4210 is set forth as appendix "A" hereto.

The new program would not be limited to refiners and petrochemical plant operators. Fee exempt exchanges would retain their status. Ethane, propane, and butane are exempt.[61] Companies building or expanding refineries or petrochemical plants coming on stream after April 30, 1973, will be granted license fee exempt allocations equal to 75 percent of their additional inputs for the first five years of operation.[62]

In justification, satisfaction of immediate energy needs, encouragement of refinery construction, added flexibility, and stimulation of domestic production by making foreign crude and products more expensive and thus contributing to national security,

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[58] Id. §15.

[59] Id. §4 (b)(2) et seq..

[60] "Nixon Releases Energy Message," <u>The Oil Daily</u>, April 19, 1973, p. 4.

[61] Presidential Proclamation No. 4210, April 18, 1973, supra note 54, §2(b).

[62] Id. at §4(b)(1).

were cited by the President in his April 18, 1973, energy message.[63]

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[63] Energy Policy Message, Oil Imports Section, delivered by President Nixon to Congress, April 18, 1973. See also, Office of the White House Press Secretary, President's Energy Message Summary Outline - Fact Sheet (Washington D.C., the White House, April 18, 1973.).

CHAPTER V

OIL IMPORT REGULATIONS

Oil Import Regulation I

Presidential Proclamation 3279 establishing the Mandatory Oil Import Program was implemented on March 13, 1959, when Secretary of the Interior, Fred A. Seaton, issued Oil Import Regulation I, providing for the discharge of the duties imposed upon him.[1]

Secretary Seaton's first move was to establish an Oil Import Administration in the Interior Department under the direction of an Administrator who was delegated and authorized to redelegate the Secretary's authority under the Proclamation.[2]

Following this he set up an allocation and licensing procedure.[3] Initial allocation periods and subsequent semi-annual periods were established.[4] Eligibility criteria were laid down for importing crude oil, unfinished oils, finished products, and residual fuel oil to Districts I -IV, District V, and Puerto Rico.[5] An ineligibility

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[1] OI Reg. 1, 24 Fed. Reg. 1907 (1959) at §1.

[2] Id. at §2.

[3] Id. at §§ 3-8.

[4] Id. at §3.

[5] Id. at §4(a), (b), and (c).

criterion was also laid down.[6] Rules for applications for import licenses for initial allocation periods for Districts I - V[7] and for Puerto Rico[8] were promulgated as were rules for the allocation period July 1, 1959, through December 31, 1959, and successive periods.[9] License issuance, contents, amendments and non-transferability were spelled out in detail.[10]

Next, the Administrator, acting within the bounds of Section two of Proclamation 3279, was ordered to determine the quantities of imports of crude oil, unfinished oils, and finished products available for allocation in Districts I - IV and District V,[11] and to make allocations for the appropriate allocation period.[12] These allocations were to be based on refinery inputs for the preceding year and computed according to a graduated schedule differing for Districts I - IV and District V, which would allow smaller refiners a larger percentage of imports.[13] Crude oil allocations were not to be less than eighty percent of a refiners last allocation under the Voluntary Oil Import Program.[14] Finished product allocations

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[6] Id. at §4(d).

[7] Id. at §5.

[8] Id. at §6.

[9] Id. at §7.

[10] Id. at §8.

[11] Id. at §9(a).

[12] Id. at §9(b).

[13] Id. at §§10 and 11.

[14] Id. at §§10(c) and 11(c).

were not to exceed ten percent of the crude allocation.[15] Allocations of product imports into Districts I - IV were based on the portion of total products imported by the applicant during 1957.[16] Allocations of crude oil were also made to refiners on the basis of inability to procure domestic crude oil by ordinary and continuous means.[17] The maximum level of imports into Puerto Rico was determined on a historical basis but was subject to periodic review by the Administrator.[18] Puerto Rican allocations also had a historical basis.[19]

Finally Secretary Seaton added some miscellaneous provisions to complete the regulation.

Licensees were required to process oils imported in their own refineries except that current exchanges in kind were authorized.[20]

Monthly reports of imports were also required.[21] False statements were considered criminal and punishable by fine or imprisonment.[22]

Suspension or revocation[23] and appellate procedures[24] were also

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[15] Id. at §§10(d) and 11(d).

[16] Id. at §13.

[17] Id. at §12.

[18] Id. at §14.

[19] Id. at §15.

[20] Id. at §17.

[21] Id. at §18.

[22] Id. at §19.

[23] Id. at §20.

[24] Id. at §21.

provided for. In conclusion, term meanings were set forth in a definitions section.[25]

To Revision 5, Amendment 57

Since the issuance of Oil Import Regulation I, it has undergone numerous changes. Many of these changes were merely reflections of modifications to Proclamation 3279. Others were changes made by various Secretaries of the Interior. As the list of amendments lengthened, revisions, incorporating previous amendments, were made. To date there have been five such revisions, and the fifth revision has been amended fifty-seven times. A comprehensive list of revisions, amendments, and corrections to amendments has been compiled and is included in the bibliography hereto. Through all the amendments, the basic structure of Oil Import Regulation I remains intact.

Making Allocations Within the Maximum Level of Imports

Crude oil is defined to mean "crude petroleum as it is produced at the well-head and liquids (under atmospheric conditions) that have been recovered from mixtures of hydrocarbons which existed in a vaporous phase in a reservoir and that are not natural gas products and the initial liquid hydrocarbons produced from tar sands."[26]

Unfinished oils are defined to mean "one or more of the petroleum oils listed in paragraph (g) of Section 22 of the Oil Import Regulations or mixtures or combinations of such oils which are to

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[25] Id. at §22.

[26] Presidential Proclamation No. 3279, March 10, 1959, as amended, 3 C.F.R. Ch. IV, Subch. A, p. 253 (1972) at §9(f)).

be further processed other than by blending by mechanical means."[27]

Under the Voluntary Oil Import Program, two criteria were used to grant allocations. One applied to "established importers", the other applied to "new importers." Actual imports for 1954, 1955, and 1956 were averaged. Then the average was reduced by one-tenth to calculate the allocation for historical importers. Newcomers were allowed to include anticipated imports for the last half of 1957 in their figures. Newcomers, who failed to file notice of intention to import oil during 1957, were not provided for.

Other refiners clamored for a piece of the import action at the commencement of the mandatory program. So it was decided to cut historic importers back to eighty percent of their final allocation under the voluntary program. The remainder of the historic importers share was then divided up among all other refiners in proportion to their refinery inputs.[28] With the passage of time, historic allocations were gradually phased out. As of January 1, 1971, historic allocations were completely eliminated.

Currently allocations are granted to refiners and petrochemical plant owners on the basis of a percentage of inputs for the previous year.[29]

Allocations are computed separately for Districts I - IV and

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[27] Id. at S9(h).

[28] Cabinet Task Force on Oil Import Control 1969-1970. George P. Schultz, Chairman, The Oil Import Question (Washington, D.C., U.S. Government Printing Office, Feb. 2, 1970) at 12.

[29] OI Reg. I (Rev.5) as amended, 32A C.F.R. ch X, OI Reg. I, p. 193 (1972) at S9.

District V.[30] A sliding scale is used to give advantage to small refiners.

Finished products are defined to include liquefied gases, gasoline, jet fuel, maptha, fuel oil, lubricating oil, asphalt, and natural gas products.[31]

The Voluntary Oil Import Program did not cover the import of finished products.

Under the Mandatory Oil Import Program, import allocations for finished products are made only to historic importers in proportion to their 1957 imports less deductions for the Oil Import Appeals Board and product shipments from the Virgin Islands. Although the Department of Defense has an allocation, it has not been used recently.[32] Overseas product consumption by the Defense Department is not considered in the computation of product imports. There was no provision made for allowing newcomers to import products.

Fuel oil is defined as:

> A liquid or liquefiable petroleum product burned for lighting or for the generation of heat or power and derived directly or indirectly from crude oil, such as kerosene, range oil, distillate fuel oils, gas oil, diesel fuel, topped crude oil, and residues."[33]

There are basically two types and five grades of fuel oil. The types are distillate and residual. The grades are 1, 2, 4, 5, and 6.

Distillate fuel oils, as the name implies, are the products of a distillation process. They are lighter both in color and weight

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[30] Id. at §10 and §11.

[31] Presidential Proclamation No. 3279, March 10, 1959, as amended note 26 supra at §9(g).

[32] OI Reg. I (Rev.5), as amended, note 29, supra at §13.

[33] Presidential Proclamation No. 3279, March 10, 1959, as amended note 26 supra at §9(g)(5).

and cleaner burning than residual fuel oils. They are also generally more profitable. Distillate fuel oils are commonly used as fuel for diesel engines and residential heating. They are graded 1, 2, and 4.

Residual fuel oils as the name implies are the leftovers of the distillation process. They are darker, heavier and dirtier burning than distillate fuel oils. Since residual fuel oil is not as profitable as other products, the residual fuel oil output of American refiners has steadily declined in recent years as demand advanced. Residual fuel oils are commonly used as fuel under the boilers of ships, institutions, utilities, and industry. They are graded numbers 5 and 6.

Under the Voluntary Import Program, fuel oil was categorized as a finished product and finished products were not subject to restrictions. Accordingly there were no import limitations on fuel oil. This rule applied to both distillate and residual fuel oils of all grades.

Because of fungibility problems encountered under the voluntary program, the mandatory program included import controls on products. Since fuel oil was designated a product, its importation was also restricted. The dichotomy between distillate and residual became more important under the Mandatory Import Program because the controls on each developed along different lines.

Distillate fuel oil imports were treated like other finished products under the Mandatory Program and were allocated on a strictly historical basis. No provisions were made for newcomers.

Residual fuel oil imports were treated differently, however,

from the inception of the Mandatory Program. Although a history of importing was stressed in making allocations, allowances were made for newcomers.

The New England States in District I, which used most of the residual fuel oil imported into the country, immediately rose in opposition to the limitations placed on residual imports. Due largely to political pressure, modifications ensued. Finally as of April 1, 1966, after a determination by the Office of Emergency Preparedness that the regulation of residual fuel oil imports was not required for national security, residual fuel oil imports were essentially decontrolled.[34] This represented a victory for the New England consumer interests and a defeat for the coal industry which was a competitor with residual fuel oil. Despite what amounted in substance to the repeal of import controls on residual fuel oil imported into District I, the intricate formal procedures of the allocation system remain in effect. Licenses continued to be required and are only granted to persons who are "in the business in District I of selling residual fuel oil to be used as fuel," and who control a deepwater terminal in District I or have a throughput agreement with a deepwater terminal in District I.[35]

As with other finished products, residual imports into Districts II - V continue to be subject to control on a historical basis. Allocations can only be granted by the Oil Import Appeals Board under a level

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[34] OI Reg. 1 (Rev.4), Amend. 8, 31 Fed. Reg. 5071 (1966).

[35] Id.

established year by year by the Secretary of the Interior.

Residual imports into District V also continue to be subject to control. However, residual imports into foreign trade zones in District V are allowed under certain circumstances and special allocations are granted for the import of low sulphur residual fuel oil into District V.

The Sliding Scale

Although not included in the Voluntary Oil Import Program or in Proclamation 3279[36] at the outset of the Mandatory Oil Import Program, the initial regulations[37] provided for allocations to refiners on the basis of a sliding scale. The effect of the sliding scale was to give small refiners a larger proportional share of permitted imports. This feature of the plan was reported to have been adopted at the insistence of the Justice Department.

The Standard Oil Company of New Jersey filed a suit in the United States District Court for the District of Columbia in August, 1961, challenging the sliding scale as discriminatory.[38] Subsequently the Government's motion for summary judgement was denied. With the July 1, 1962, quota period - the Secretary of the Interior collapsed the number of steps in the program scale from nine to four.[39] This

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[36] Presidential Proclamation No. 3279, March 10, 1959, 24 Fed. Reg. 1781, 3 C.F.R., 1959-1963 Comp., p. 11.

[37] OI Reg. 1, 24 Fed. Reg. 1907 (1959) at §§10 and 11.

[38] Standard Oil v. Udall, Civil No. 2496 - 61 (D.D.C. 1961).

[39] OI Reg. I (Rev.3) Amend. 3, 27 Fed. Reg. 6353 (1962) at §§10 and 11.

meant that all refiners on the input formula received an allocation equal to 5.2% of all input in excess of 100,000 b/d.

In Proclamation 3509 of November 30, 1962, President Kennedy modified Proclamation 3279 to authorize the Secretary of the Interior to provide for distribution of quotas "on the basis of a graduated scale."[40] This was obviously intended to counter Jersey's contention that the sliding scale was not allowed by Proclamation 3279. The case was then withdrawn by Jersey in December, 1962.[41]

Although other proposals for change of the sliding scale have been made, no action has been taken.[42]

The scale is applied to each company on the basis of its refinery inputs. Different scales are used for Districts I - IV and District V.[43] The percentage figures used change from year to year and are calculated by the Oil Import Administration on the basis of total imports available for allocation and ad hoc policy objectives as to distribution among the various brackets.[44]

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[40] Presidential Proclamation No. 3509, November 30, 1962, 27 Fed. Reg. 11985, 3 C.F.R., 1959 - 1963 Comp. p. 238.

[41] Standard Oil v. Udall, note 38 supra.

[42] See 31 Fed. Reg. 12924 (1966) and also 31 Fed. Reg. 13050 (1966) and 36 Fed. Reg. 18750 (1971).

[43] OI Reg. 1 (Rev. 5), 31 Fed. Reg. 7745 (1966) as amended at §§10 and 11.

[44] Cabinet Task Force on Oil Import Control, 1969 - 1970, George P. Schultz, Chairman, The Oil Import Question (Washington, D.C. supra note 28.) See also Kenneth W. Dam "Implementation of Import Quotas: The Case of Oil," Journal of Law and Economics, Volume 14, April, 1971, pp. 20 - 24.

Appeals Board Allocations

Under the Voluntary Oil Import Program there were no Oil Import Appeals Board Allocations because there was no Oil Import Appeals Board. At the beginning of the Mandatory Oil Import Program grants by the Board during a given allocation period, resulted in imports in excess of the fixed level. To remedy this situation the regulations were amended to provide that when the Board granted an increased quota, it would not become effective until the next quota period, and that the Administrator would be notified at least thirty days prior to the outset of a new quota period.[45] In the recent past allocations by the Board were deducted from a set aside, which was itself subtracted in advance from the total crude and products quota available for allocations.[46] To this end an allocation of the estimated levels of crude and product allocations was made to the Board at the beginning of the allocation year.

This caused many Board decisions to be delayed until the end of September to allow consideration of all applications. If there were remaining product import allocations not granted by the Board, the Administrator was directed to distribute them immediately among all eligible persons in proportion to their historical percentages.[47]

In December of 1972 additional imports of 40,000 b/d for

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[45] OI Reg. 1 (Rev. 2) Amend. 10, 27 Fed. Reg. 5954 (1962) at §21.

[46] Cabinet Task Force on Oil Import Control 1969 - 1970, George P. Schultz, Chairman, The Oil Import Question, note 28 supra at p. 14.

[47] OI Reg. 1 (Rev. 5) 31 Fed. Reg. 7745 (1966) at §21 (c)(3).

Districts I - IV and 5000 b/d for District V were made available to the Oil Import Appeals Board.[48]

In Proclamation 4202 the Oil Import Appeals Board was authorized to act on appeals without regard to the maximum levels of imports in most instances.[49]

Ticket Exchanges

Under the Mandatory Oil Import Program, imported crude and unfinished oils were required to be processed in the licensee's refinery or petrochemical plant or exchanged for domestic crude or unfinished oils which would be processed by the licensee.[50] Thus, quotas could be exchanged but not sold. Exchanges between Districts I - IV and District V were prohibited. The regulations seemed to also forbid[51] exchanges between Districts in the I - IV area. However, the term "District" was broadly interpreted by the Oil Import Administration to refer to Districts I - IV as a whole.

Proposed agreements for each such exchange must be reported before the exchange takes place. Exchanges made possible greater efficiency in the use of imported crude oil since nearly all crude oil imported by sea into Districts I - IV could thereby be refined by

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[48] OI Reg. 1 (Rev. 5), Amend. 48, 37 Fed. Reg. 26831 (1972).

[49] Presidential Proclamation No. 4210, April 18, 1973, 38 Fed. Reg. 9645.

[50] Id. at §4(b)(3).

[51] OI Reg. 1 (Rev. 5), 31 Fed. Reg. 7745 (1966), as amended at §17 (b)(4).

[52] Id. at §17(b)(2).

companies with coastal refineries.[53] The coastal refiners "paid" for these imports by delivering domestic crude oil to the particular inland refiner whose quota was being used. The exchange agreement specified the exchange ratio.

Exchanges of tickets were attractive to both parties. The inland independent refiners used domestic crude produced by the major oil companies, and the major oil companies imported and refined the foreign crude, using the inland refiners' tickets. This arrangement worked splendidly as long as landed foreign crude prices were lower than domestic prices since the ticket still had value and could be traded.

In early 1973, however, landed foreign crude and product prices rose significantly. This was due to increased OPEC ownership participation in production companies, devaluation of the dollar, high tanker rates, and high spot market prices for scarce low sulphur fuels.[54] With ticket allocations increasing fifty-six percent in 1973, there was no shortage of tickets. With foreign prices higher than domestic and a substantially increased number of tickets, majors were not willing to purchase tickets, and independents had trouble obtaining supplies. Ticket holders under the President's 1973 Quota Fee Program should

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[53] Testimony of Paul T. Homan in Governmental Intervention in Market Mechanism, The Petroleum Industry, Hearings before the sub. comm. on anti-trust and monopoly, of the s. comm. on the Judiciary, 91st Cong., 1st sess., pt. 1, at 108.

[54] Office of the White House Press Secretary, <u>President's Energy Message Summary Outline and Fact Sheet</u> (Washington, D.C., The White House, April 18, 1973).

again be able to trade valuable license fee exempt import licenses for domestic crude or products.[55] Theoretically this should help alleviate some of the current distribution problems affecting, primarily, the inland independent refiners and marketers.

Description of the Oil Import Regulations as Presently Amended

Rather than describe Oil Import Regulation I (Revision 5) as amended, a copy of the Regulation being distributed by the Office of Oil and Gas as of May 1, 1973 is set forth in full as Appendix B hereto. It should be noted, however, that Appendix B is amended only through March 31, 1971, and that since then some twenty-seven different amendments have been made. Yet this remains the most unified version of the regulations available from the Office of Oil and Gas.

For the seriously interested student, citations to the twenty-seven updating amendments may be found in the bibliography to this work under the heading Oil Import Regulationl, Revision 5, at Amendments 31 through 57.

OIL IMPORT REGULATION 2

Section 20 of Oil Import Regulation 1 provides for a formal procedure to look into the suspension or revocation of any allocation or license to import.[56] Oil Import Regulation No. 2 consists of the rules of procedure applicable in such proceedings.[57]

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[55] Presidential Proclamation No. 4210, April 18, 1973, note 49 supra.

[56] OI Reg. 1 (Rev. 5), as amended, note 29 supra at §20.

[57] OI Reg. 2, as amended, 32A C.F.R. Ch.X, OI Reg. 2, p.216 (1972) at §1.

Proceedings are begun with a Notice of Hearing, specifying the regulation, the action to be taken, and the basis of the action.[58] Service may be in person or by first class mail.[59]

Within twenty days the allocation holder may file an answer to the notice[60] and request a hearing at which he may appear in person or by counsel.[61] Failure to answer can be considered a confession of all matters of fact recited in the notice.[62] Failure to request a hearing is deemed a waiver.[63]

The presiding officer may be either the Administrator or a hearing examiner.[64] He regulates the course of the hearing and the behavior of the persons involved.[65]

Testimony is taken on oath or affirmation and may be required to be written.[66]

The rules of evidence do not apply.[67]

At the conclusion of a hearing the presiding officer may fix a time for filing briefs.[68]

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[58] Id. at §2.

[59] Id. at §21 and §22.

[60] Id. at §3.

[61] Id. at §26

[62] Id. at §3.

[63] Id. at §5.

[64] Id. at §6.

[65] Id. at §7.

[66] Id. at §8.

[67] Id. at §13.

[68] Id. at §15.

Transcriptions of oral evidence are prepared and made a part of the record,[69] which may be inspected or copied, but are not to be published.[70]

In each case the Administrator makes a decision.[71] If the case was heard by a hearing examiner, the Administrator has a right to review the decision. Decisions may be appealed to the Oil Import Appeals Board.[72]

Bulletins

Oil Import Administration Bulletins are notices on specific subjects, promulgated by the Oil Import Administration for the information of the public. From March, 1959, to date, there have been seven such bulletins.

Bulletin No. 1 of March 19, 1959, related to unfinished oils.[73] It stated that if more unfinished oils were imported during the time interval between the beginning of the Mandatory Oil Import Program and the first issuance of licenses than the licenses allowed, the excess would be deducted from further allocations.

In cargoes, in which crude and unfinished oils had been co-mingled, the unfinished oil portion would be charged against the unfinished oils portion of the license.

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[69] Id. at §16.

[70] Id. at §17.

[71] Id. at §18.

[72] Id. at §19.

[73] Oil Import Administration Bulletin No. 1, "Unfinished Oils," Oil Import Administration, March 19, 1959. 32A C.F.R., Ch. X, Bulletin 1, p. 193 (1972), 24 Fed. Reg. 2361 (1959). See also Amend. 1, 36 Fed. Reg. 21284 (1971).

Bulletin No. 2 of August 15, 1966, which treated allocations to refiners and petrochemical plants,[74] has since been revoked.[75] It stated that particular units or groups of units within a facility or facilities themselves ordinarily would not qualify as petrochemical plants or refineries. If they did, because of input and output, a decision had to be made as to whether they were petrochemical plants or refineries. The input year for petrochemical plants and refineries was said to be October 1 through September 30. Allocations for the next succeeding allocation period were made on this base period.

Bulletin No. 3 of September 3, 1969, concerned applications for Oil Import Allocations.[76] It emphasized the requirement that applications for allocations and licenses be filed not later than sixty days before the beginning of an allocation period. Timely filing, it stressed, was essential.

Bulletin No. 4 of September 3, 1969, was concerned with petrochemical plants using extender oils in manufacturing synthetic rubber. During the 1969 allocation period the Oil Import Administration refused to grant allocations based on use for this purpose because there was no

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[74] Oil Import Administration Bulletin No. 2. "Allocations - Refiners and Petrochemical Plants," Oil Import Administration, August 15, 1966, 31 Fed. Reg. 10887 (1966).

[75] OI Reg. 1 (Rev. 5) Amend. 7, 33 Fed. Reg. 8448 (1968).

[76] Oil Import Administration Bulletin No. 3. "Applications for Oil Import Allocations," Oil Import Administration, September 3, 1969, 34 Fed. Reg. 14906 (1969). See also Amend. 1, 36 Fed. Reg. 20618 (1971).

chemical conversion involved.[77]

The Oil Import Appeals Board considered this interpretation too narrow.[78] Therefore, during the ensuing allocation periods extender oils used in the manufacture of synthetic rubber was considered petrochemical plant inputs by the Oil Import Administration.

Bulletin No. 5 of November 12, 1970, had as its subject, "Imports of Canadian Natural Gas Liquids into Districts I - IV."[79] After citing the Proclamation exemption, Bulletin 5 went on to clarify the definition of the exempt liquids.[80] Compliance with the definitional standards and certification by an officer of the importing company were required. Records for verification of Certification were also required. Customs officer reporting procedures were established.

Bulletin No. 6 of November 20, 1970, was about imports of western hemisphere ethane, propane and butane into Districts I - IV

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[77] Oil Import Administration Bulletin No. 4. "Petrochemical Plants Using Extender Oils in Manufacturing Synthetic Rubber," Oil Import Administration, September 3, 1969.

[78] See Firestone Tire and Rubber Company, O.I.A.B. Case No. Q-46 (1968), Goodrich - Gulf Chemicals, Inc. O.I.A.B. Case No. Q-72 (1968), and Ashland Oil and Refining Company, O.I.A.B. Case No. Q-74 (1968).

[79] Oil Import Administration Bulletin No. 5, "Imports of Canadian Natural Gas Liquids into Districts I - IV," November 12, 1970, 35 Fed. Reg. 17676 (1970), See also - Amend. 1, Oil Import Administration Bulletin No. 7.

[80] Presidential Proclamation No. 3279, March 10, 1959, 24 Fed. Reg. 1781, 3 C.F.R., 1959 - 1963 Comp., p. 11, as amended to November 12, 1970 at §1A(e). In particular see Presidential Proclamation No. 4018, October 16, 1970, 35 Fed. Reg. 16357, 3 C.F.R., 1966 - 1970 Comp., p. 512..

and District V.[81] It set up a certification, verification, and reporting system for imports of western hemisphere ethane, propane, and butane, similar to that of Bulletin No. 5 for Imports of Canadian Natural Gas Liquids into Districts I - IV.

Bulletin No. 7 of November 19, 1970, dealing with imports of Canadian natural gas liquids into Districts I - IV, amended the third paragraph of Oil Import Administration Bulletin No. 5. Other provisions were unaltered.[82]

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[81] Oil Import Administration Bulletin No. 6, "Imports of Western Hemisphere, Ethane, Propane, and Butane into Districts I - IV and District V." Oil Import Administration, November 20, 1970.

[82] Oil Import Administration Bulletin No. 7, "Imports of Canadian Natural Gas Liquids into District I - IV," Oil Import Administration, November 19, 1970.

CHAPTER VI

THE OIL IMPORT ADMINISTRATION

Purpose and Establishment

The Report of the Special Committee to Investigate Crude Oil Imports of March 6, 1959, recommended that the Voluntary Oil Import Program be replaced by a Mandatory Program. It also recommended that the responsibility for administering that program be delegated to the Secretary of the Interior.[1] This recommendation of the Special Committee was incorporated in Presidential Proclamation 3279 of March 10, 1959, adjusting imports of petroleum and petroleum products into the United States.

Under the Proclamation, the Secretary of the Interior was authorized to issue implementing regulations consistent with the levels established in the Proclamation for imports of crude oil, unfinished oils, and finished products into Districts I - IV, District V, and Puerto Rico. The Secretary was also charged to provide for systems of allocation and licensing subject to transfer restrictions.[2]

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[1] Special Cabinet Committee to Investigate Crude Oil Imports, 1957 - 1958, Lewis L. Strauss, Chairman. <u>Report</u> (Washington, D.C.: The White House, March 6, 1959.).

[2] Presidential Proclamation No. 3279, March 10, 1959, 24 Fed. Reg. 1781, 3 C.F.R., 1959 - 1963, at §3.

This the Secretary accomplished under Oil Import Regulation I by establishing in the Department of the Interior an Oil Import Administration under the direction of an Administrator whom he designated. The Administrator was allowed to use all the authority vested in the Secretary by Proclamation 3279 and could redelegate that authority if he chose to do so.[3]

Place in the Institutional Framework

This section is designed to show how the Oil Import Administration fits into the government organization. In addition, it contains brief descriptions of the various offices and agencies connected with the Oil Import Program. Supplemental information on organizational development and interrelationships is contained in chart form.

The Oil Import Administration has since 1959 allocated imports of crude oil, unfinished oils, and finished products (including residual oils) into the United States among qualified applicants and issued import licenses on the basis of such allocations. It has been responsible for the day to day performance of administrative functions of the Oil Import Program.[4] Originally the Oil Import Administration reported to the Assistant Secretary of the Interior for Mineral Resources, who in turn reported to the Under Secretary of the Interior, and through him to the Secretary of the Interior.[5]

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[3] O.I. Reg. 1, 24 Fed. Reg. 1907 (1959) at §2.

[4] Oil Import Policy Statement by President Nixon upon receiving the Report of the Cabinet Task Force on Oil Import Control. Feb. 20, 1970.

[5] Cabinet Task Force on Oil Import Control, 1969 - 1970, George P. Schultz, Chairman. The Oil Import Question (Washington, D.C.; U. S. Government Printing Office, February 2, 1970) at 15.

More recently, on October 22, 1971, the Oil Import Administration was merged with the Office of Oil and Gas, under a reorganization plan of the Secretary of the Interior. The duties of the former Oil Import Administration were taken over by the Office of Oil and Gas, and the same chain of command prevailed.[6]

The Oil Import Appeals Board, which is treated more fully below, consists of one representative each from the Departments of Commerce, Justice, and Interior. It considers petitions and appeals by persons affected by the Oil Import Regulations. The Board is authorized within specified limits, to modify any allocation granted by the Oil Import Administration, on the grounds of exceptional hardship or error; to grant allocations for crude oil in special circumstances, to persons with importing histories who are ineligible for allocations under the Regulations; to grant allocations for finished products on the ground of exceptional hardship, to persons who do not qualify under the Regulations; and to review the revocation or suspension of any allocation or license. Decisions of the Board are final. Presently the Board is under the Office of Hearings and Appeals which reports to the Under Secretary of Interior.[7]

The Secretary of the Interior issues Oil Import Regulations and Amendments to those regulations. Notice and hearing procedures normally associated with rule making procedures are considered

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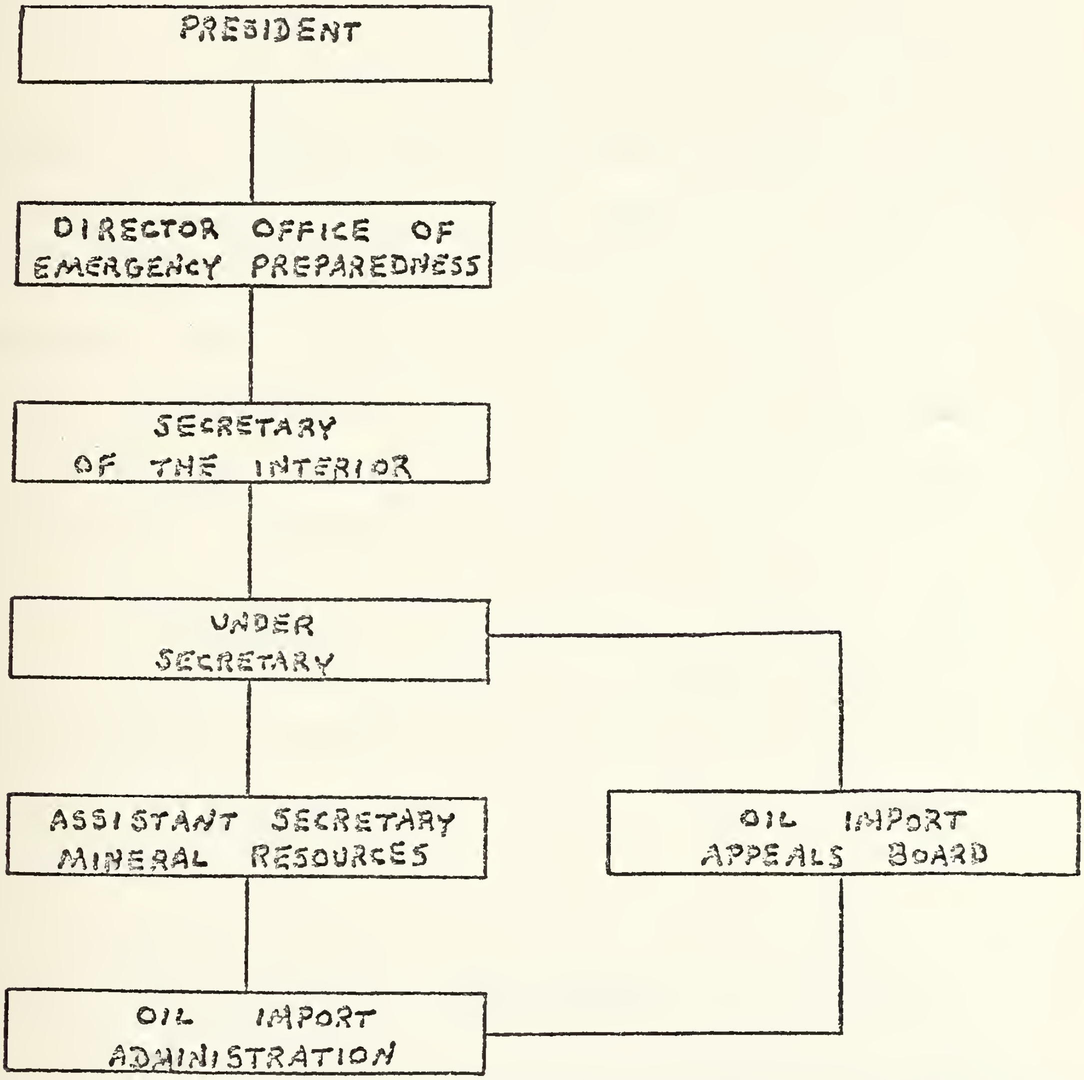
[6] Office of the Federal Register, National Archives and Records Service, General Services Administration. United States Government Organization Manual - 1972/1973 (Washington, D.C.: Government Printing Office, 1972), at 252.

[7] Office of Oil and Gas Department of the Interior, Government Agencies Concerned with Oil and Gas Matters (Washington D.C.: Office of Oil and Gas Department of the Interior, 1971 eratta.)

FIG 17
OIL IMPORT ORGANIZATION CHART
1959



applicable but have been dispensed with on numerous occasions in the past.[8]

In 1959 the Director of the Office of Civil and Defense Mobilization was ordered to keep the entire Oil Import Program under constant surveillance and to inform the President of any circumstances which, in his opinion, demonstrated a need for further Presidential action.[9]

Following the submission of the Task Force recommendations in February, 1970, President Nixon decided on a new management system to set policy for the Oil Import Program. Accordingly he ordered the Director of the Office of Emergency Preparedness to chair an interdepartmental panel including the Secretaries of State, Treasury, Defense, Interior, and Commerce, the Attorney General, and the Chairman of the Economic Advisers. This panel was called the Oil Policy Committee and with its advice, the Director of the Office of Emergency Preparedness was to be responsible for policy direction, coordination, and surveillance of the Oil Import Program. The President expected the Oil Policy Committee to consider both the interim and long term adjustments which would increase the effectiveness and enhance the equity of the Oil Import Program.[10]

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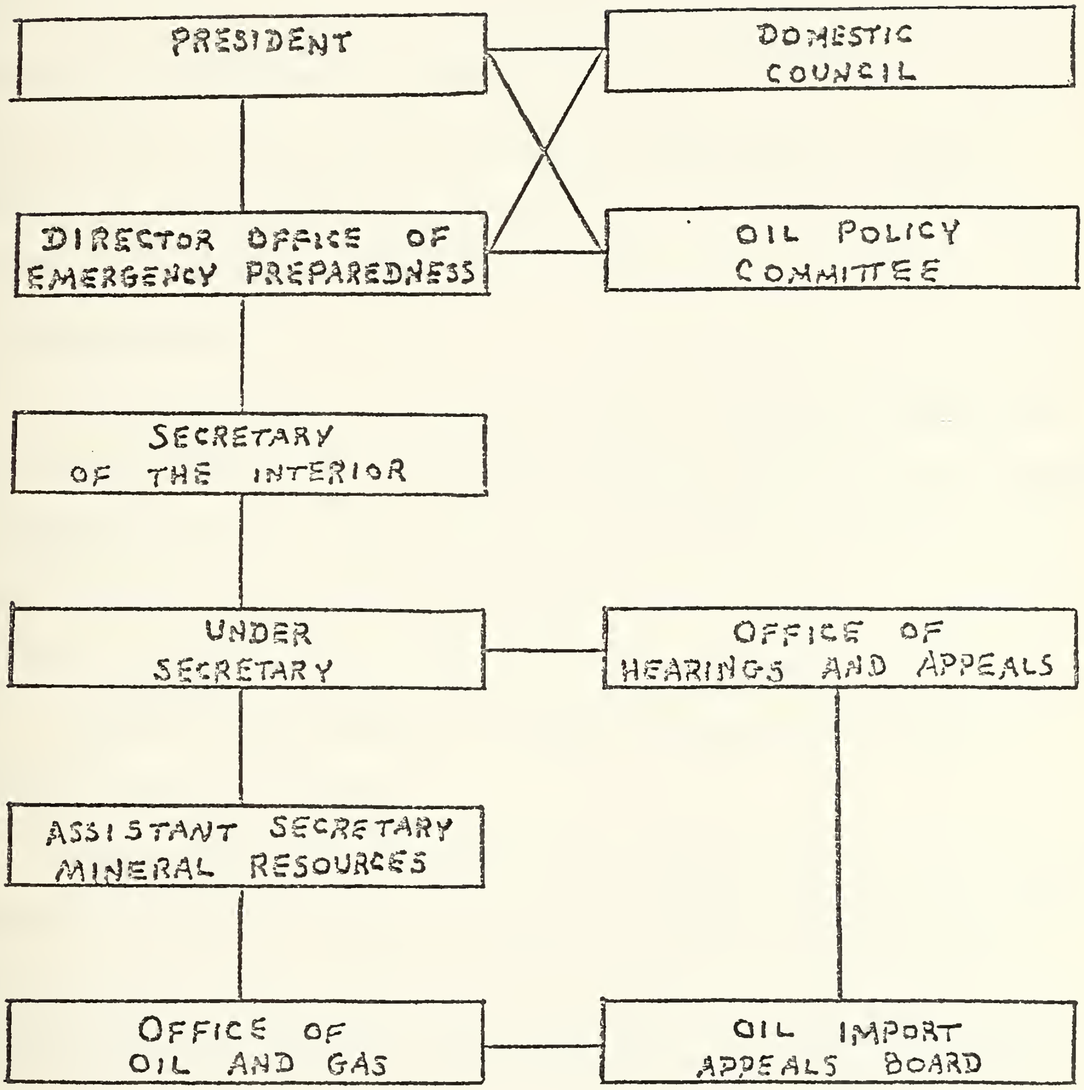
[8] Cabinet Task Force on Oil Import Control, 1969-1970, George P. Schultz, Chairman, The Oil Import Question, supra at Note 5.

[9] James C. Hagerty, press release, Presidential Proclamation Adjusting Imports of Petroleum and Petroleum Products into the United States, 1959, Statement by the President (Washington D.C.: The White House, March 10, 1959).

[10] Oil Import Policy Statement by President Nixon, supra at Note 4.

FIG 13
OIL IMPORT ORGANIZATION CHART
1972



In August, 1970, President Nixon formed a Committee of the Domestic Council to study the short and long term National energy situation. This committee, chaired by the Chairman of the Council of Economic Advisors, included: the Secretary of State, the Secretary of the Interior, the Secretary of Commerce, the Administrator of the Environmental Protection Agency, the President's Science Advisor, the Chairman of the Council of Environmental Quality, the Director of the Office of Emergency Preparedness, Chairman of the Federal Power Commission, Chairman of the Atomic Energy Commission, the Special Assistant to the President on Consumer Affairs, and the Director of the Office of Management and Budget.[11] The President of course heads the organization.

During 1973 the organizational scheme has become considerably more complex. So much so that Under Secretary of Interior, John Whitaker was quoted as saying, "I can appreciate the confusion as to under what shell is the pea when asked direct organization questions. I think the modus operandi is to grab for the best advice you can get.[12]"

President Nixon has made it clear to aides that he wants to make final decisions himself.

John Connally, as the President's energy emissary has undertaken informal discussions of energy problems with middle eastern leaders.[13]

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[11] Office of the White House Press Secretary. President's Energy Message Fact Sheet (Washington D.C.: The White House, June 4, 1971).

[12] Gene T. Kinney, "Nixon Energy Team Ready, Awaits Final Policy Signal," The Oil and Gas Journal, March 26, 1973, p. 36.

[13] "Nixon Says Connally is His Emissary on Energy," Platt's Oilgram News Service, March 5, 1973, p. 1.

Directly under the President is the Special Committee on Energy consisting of George P. Schultz, in charge of treasury and economic matters, as chairman, Henry Kissinger, who is in charge of national security and foreign affairs, and John Erlichman, before he resigned, who was in charge of domestic affairs.[14] The special committee on energy receives input from Charles J. DiBona, who is assigned as a Special Energy Consultant, and Earl Butz, who has been designated as counselor for Natural Resources.[15]

The Domestic Council and the Oil Policy Committee also report to the Special Committee on Energy.

In 1973 the Office of Emergency Preparedness was abolished in a reorganization[16] and the Treasury Department assumed policy control,[17] taking over the Office of Emergency Preparedness's seats on the Oil Policy Committee and the Domestic Council. George P. Shultz, it will be recalled, was the chairman of the Cabinet Task Force on Oil Import Control, which recommended tariffs back in 1970.[18]

His deputy, William E. Simon, has been installed as head of the Oil Policy Committee. Simon's oil import advisor is William H. Johnson.

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[14] Executive Order No. 11712, April 18, 1973, 38 Fed. Reg. 9657.

[15] "U.S. Shaping Energy Policy Machinery," The Oil and Gas Journal, March 15, 1973, p. 44.

[16] Executive Plan No. 1 of 1973, April 17, 38 Fed. Reg. 9579.

[17] Executive Order No. 11703, February 7, 1973, 38 Fed. Reg. 3579.

[18] Cabinet Task Force on Oil Import Control, 1969-1970, George P. Schultz, Chairman, The Oil Import Question, supra note 5.

FIG 19
OIL IMPORT ORGANIZATION CHART
1973

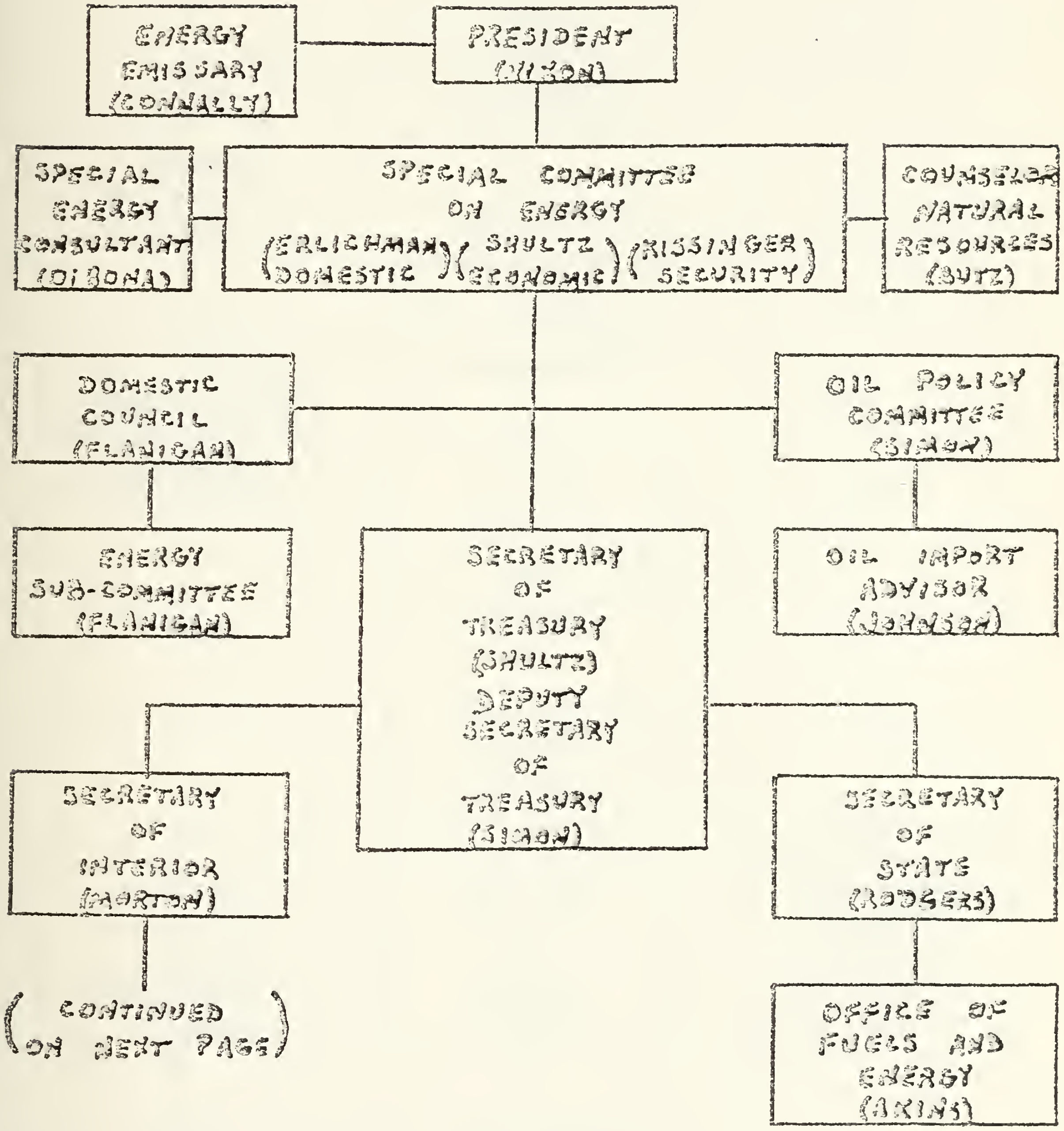


FIG 19
OIL IMPORT ORGANIZATION CHART
1973
(CONTINUED)

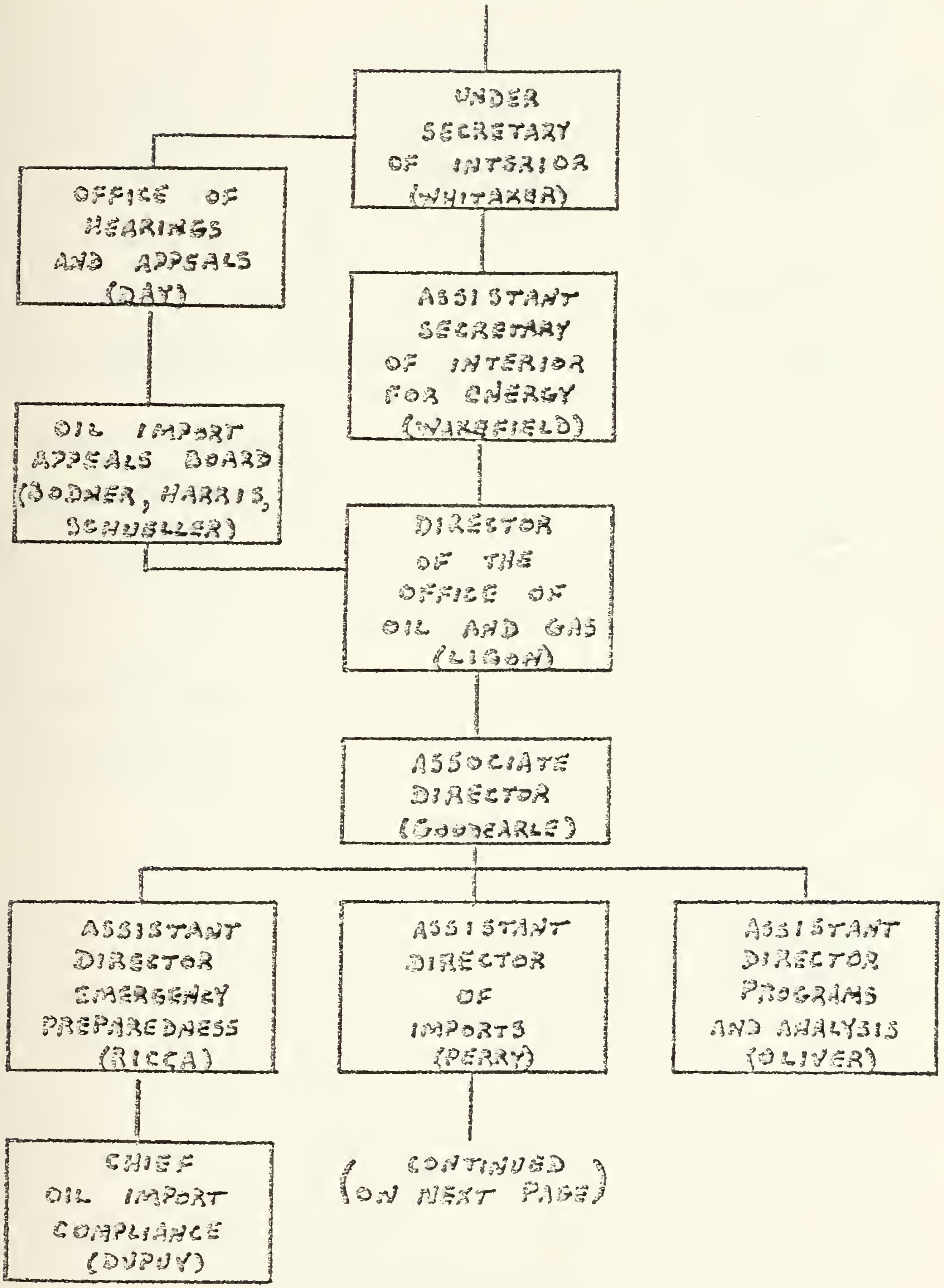
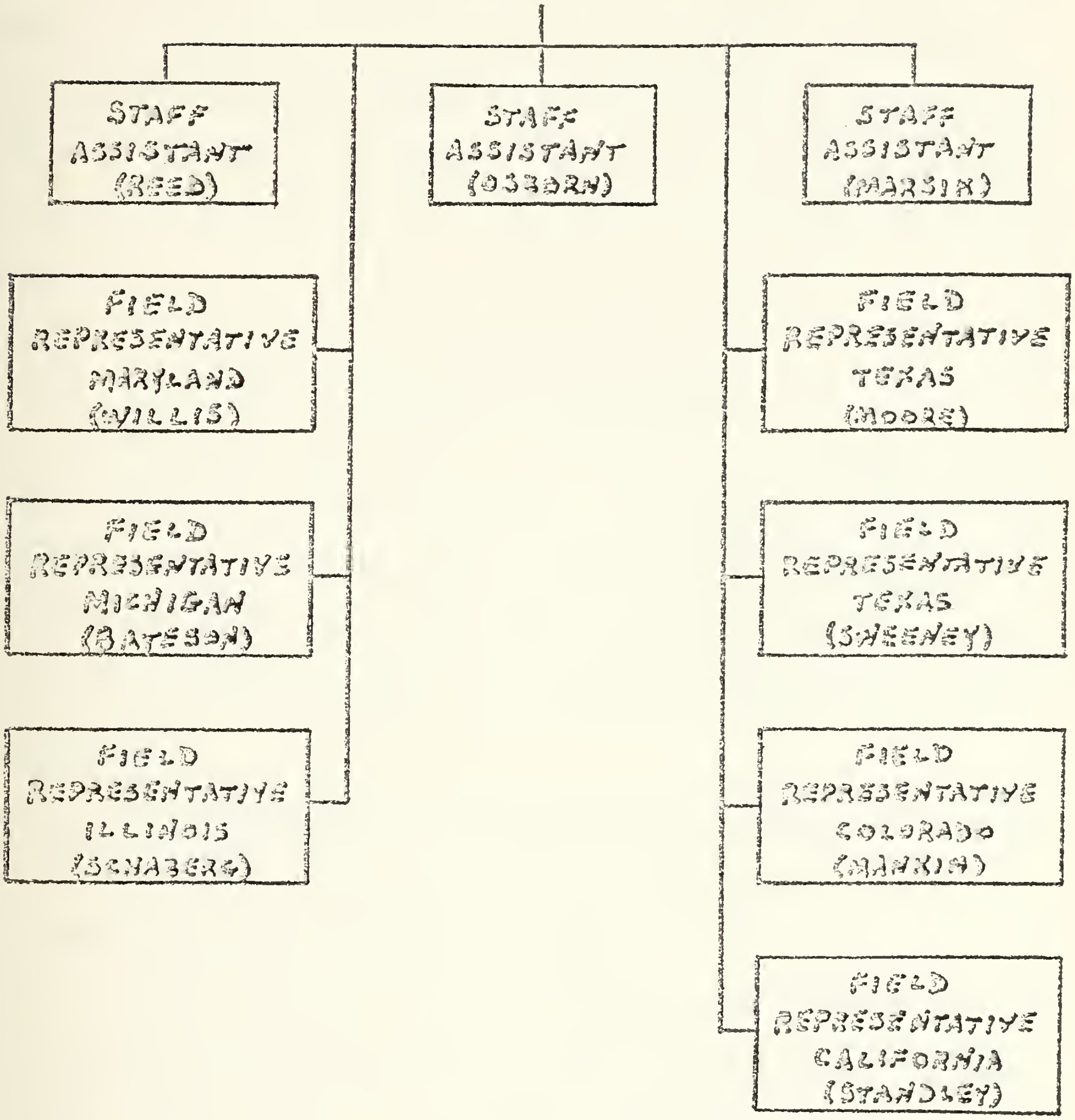


FIG 19
OIL IMPORT ORGANIZATION CHART
1973
(CONTINUED)



Simon said that as Chairman, he "will set policy direction and assume the coordination role within government." Implementation of the program will remain with Interior. "However in order to assure effective coordination," the director of the Treasury's Office of Natural Resources, Duke Ligon, has been appointed as Director of the Office of Oil and Gas. Ligon will also serve as executive secretary of the Oil Policy Committee.[19] J. Roy Goodearle is Ligon's associate director.

Location and Composition

Under Goodearle as Assistant Director of Oil Imports is Dell Perry. He has three staff assistants -- Fred Marsik, Theresa Osborn, and Lisle Reed. In addition he has seven field representatives -- Standley from California, Mankin from Colorado, Schaberg from Illinois, Willis from Maryland, Bateson from Michigan, and Moore and Sweeney from Texas.

Also under Goodearle is John Ricca who is Assistant Director for Emergency Preparedness and Oil Import Compliance. His chief of Oil Import Compliance is Kenneth L. Dupuy.

The office of Oil and Gas is located on the fifth floor of the main Interior Department building at 18th and "C" Streets, Northwest, Washington, D.C., 20240. The telephone number of the office is 202 - 343 - 8071.

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[19] "O.P.C. Will Play Central Role in Over-All U. S. Energy Policy - Simon," Platt's Oilgram News Service, March 5, 1973, at 1.

Applications and Allocations

Allocations of imports of crude oil, unfinished oils or finished products are made annually on a calendar year basis; except that allocations of imports into Petroleum Administration for Defense Districts II - IV of residual fuel oil to be used as fuel, are made for a period of one year beginning April 1.[20]

Before the beginning of each allocation period, the Administrator of the Oil Import Administration determines the quantities of imports of crude oil and unfinished oils which are available for allocation in Districts I - IV and in District V, respectively. He also determines the quantities of imports of residual fuel oil to be used as fuel. The Secretary of the Interior must review the level of imports of residual fuel oil to be used for fuel on a monthly basis if required, making such adjustments as he determines to be consonant with the objectives of the Proclamation. Residual fuel oil imported in District I is subject to allocation and license under a liberalized program imposing no quantitative restrictions.

Applications for allocations of imports of crude oil, unfinished oils, or finished products, and for a license or licenses, must be filed with the Administrator not later than sixty calendar days prior to the beginning of the allocation period for which the allocation is required[21]. Allocations of crude oil and unfinished oils are made

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[20] O.I. Reg. 1 (Rev. 5), 31 Fed. Reg. 7745 (1966) as amended at §3.

[21] Id. at §5.

to oil refiners and petrochemical firms.[22] The amount of the allocation is based on the amount of refinery throughputs of the prior twelve month period ending September 30. A "sliding scale" is used to give an advantage to small refiners.

Allocations for Districts I - IV are made from the amount of oil remaining after the amounts of non-exempt oil shipped from Canada, Mexico, and Puerto Rico, as well as quantities set aside for the Oil Import Appeals Board, the Defense Departments and contingencies, are deducted from the maximum level of imports set in the Proclamation.

District I - IV allocations of crude and unfinished oil, whether offshore or Canadian, are made to refiners and petrochemical plants, based on inputs.[23] 15,000 b/d of finished products are allocated to Hess Oil Co. for importation from the Virgin Islands.

Allocations for District V are made from the amount of oil remaining after estimates for Canadian overland imports and production of low sulphur residual fuel and set asides for the Oil Import Appeals Board and the Department of Defense are deducted from the estimated difference between supply and demand for District V. Allocations of crude and unfinished oils are made to refineries and petrochemical plants.[24] There are no allocations to import finished products.

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[22] Id. at §5.

[23] Id. at §§ 9 and 10.

[24] Id. §§ 9 and 11.

Allocations from Puerto Rico are made from an amount of oil deemed by the Secretary of the Interior to be consistent with the purposes of the program. Crude and unfinished oil allocations are granted to refiners having allocations in 1964 based upon requirements.[25] Four companies have allocations granted under separate authority of the Secretary to grant allocations to promote the economic health of Puerto Rico.

On April 18, 1973, President Nixon suspended direct control over the quantity of crude oil and refined products which could be imported. Under the new system, present holders of import licenses may import petroleum exempt from fees up to the level of their 1973 quota allocations. For imports in excess of the 1973 level, a fee must be paid by the importer.[26] These fees will be adjusted upward over the next three years.[27] Correspondingly the maximum levels of imports subject to allocation to which fees are not applicable will be adjusted downward for the next seven years, until they are abolished in 1980.[28]

The Issuance of Licenses

In the past - based on allocations, in the present - based on allocations or fees, and in the future - based on fees, the Director

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[25] Id. §5.

[26] Energy Policy Message by President Nixon to Congress, April 18, 1973.

[27] Presidential Proclamation No. 4210, April 18, 1973, 38 Fed. Reg. 9645 at §3.

[28] Id. at §11.

of the Office of Oil and Gas will issue licenses indicating the amount of crude or products which may be imported, during what time-frame and into what districts. The director has the right to amend licenses.[29]

Records and Inspections

Persons receiving allocations are required to maintain complete records of all imports, refinery and petrochemical plant, inputs and outputs, on a current basis for a period of three years. Representatives of the Office of Oil and Gas have a right to examine these records to insure compliance. In order to verify the records they also have a right to inspect all facilities and operations.[30]

Suspension and Revocation of Licenses

Following a hearing, the Director of the Office of Oil and Gas may suspend or revoke any allocation or license. Reason for revocation or suspension can be violation of Proclamation 3279, the oil import regulations or the conditions of the license. Grounds for suspension or revocation could also be connected to national security.[31]

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[29] O.I. Reg. 1 (Rev. 5), note 20, supra at §7.

[30] Id. at §6.

[31] Id. at §20.

CHAPTER VII

THE OIL IMPORT APPEALS BOARD

Need and Fulfillment

In the creation of any intricate and complex system involving the fixing of maximum levels of imports of a commodity and the allocating of valuable rights to import that commodity to a limited number of persons with the correlative, economic implications, it could reasonably be forseen that problems would be bound to flourish. Imports of crude oil and its principal products proved no exception.

Accordingly in an endeavor to resolve some of the difficulties anticipated under its proposed Mandatory Oil Import Program, the Special Committee to Investigate Crude Oil Imports in its report of March 6, 1959, recommended that the Secretary of the Interior

> . . . be authorized to provide for the establishment and operation of an Appeal Board comprised of one representative each from the Departments of the Interior, Defense, and Commerce and to empower the Board on grounds of hardship, error or other relevant special consideration, but within the limits of the maximum levels of imports established, to modify allocations, to grant allocations of crude oil and unfinished oils in special circumstances to companies with importing histories who did not qualify under forgoing provisions and to review the revocation or suspension of any allocation or permit.[1]

In addition the Special Committee recommended that the Secretary, "be

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[1] Special Cabinet Committee to Investigate Crude Oil Imports 1957-58, Lewis L. Strauss, Chairman, Report (Washington D.C.: The White House, March 6, 1959).

authorized to provide that the decisions of the Board be final."[2] These recommendations represented a departure from the Voluntary Oil Import Program under which there was no formal appelate procedure.

Following the recommendations of the Special Committee to Investigate Crude Oil Imports, President Eisenhower authorized the Secretary of the Interior to establish an Appeals Board in Section four of Presidential Proclamation 3279, Adjusting Imports of Petroleum and Petroleum Products Into the United States, on March 10, 1959. Section four provided:

> For the purpose of hearing and considering appeals or petitions by persons affected by the regulations issued by the Secretary of the Interior, he is authorized to provide for the establishment and operation of an Appeal Board, comprised of one representative each from the Departments of the Interior, Defense, and Commerce to be designated, respectively by the heads of such Departments. Such representatives shall be the rank of Deputy Assistant Secretary or higher. The Appeal Board may be empowered, on grounds of hardship, error, or other relevant special consideration, but within the limits of the maximum levels of imports established in Section 2 of this proclamation (1) to modify any allocation made to any person under the regulations issued pursuant to Section 3 of this proclamation, (2) to grant allocations of crude oil and unfinished oils in special circumstances to persons with importing histories who do not qualify for allocations under such regulations, and (3) to review the revocation or suspension of any allocation or license. The secretary may provide that such decisions by the Appeal Board shall be final.[3]

The Secretary of the Interior executed the authority granted him in Proclamation 3279 by incorporating Section 21 into Oil Import Regulation (1). Section 21 provided:

> (a) There is hereby established an Oil Import Appeals Board comprised of one representative each from the Dept. of Commerce, Defense

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[2] Id.

[3] Presidential Proclamation No. 3279, March 10, 1959, 24 Fed. Reg. 1781, 3 C.F.R., 1959 - 1963 Comp., at §4.

> and Interior, designated, respectively, by the Secretaries of such Departments. The Board shall elect a Chairman from its own membership.
> (b) The Appeals Board shall hear and consider petitions and appeals by persons affected by this regulation and may, on grounds of hardship, error, or other relevant special consideration, but within the limits of the maximum levels of imports established in section 2 of Proclamation 3279:
>
> (1) Modify any allocation made to any person under this regulation;
>
> (2) Grant allocations of crude oil and unfinished oils in special circumstances to persons with importing histories who do not qualify for allocations under this regulation; and
>
> (3) Review the revocation or suspension of any allocation or license.
>
> The decisions of the Appeals Board on petitions and appeals shall be final.
>
> (c) All petitions and appeals to the Appeals Board seeking relief from a decision of the Administrator shall be filed with the Administrator not later than seven days following the announcement of said decision.
> (d) The Appeals Board may adopt, promulgate, and publish such rules of procedure as it deems necessary for the conduct of its hearings.[4]

Thus the Oil Import Appeals Board was established as a quasi legal administrative tribunal.

Position in the Government Organization

Section 21 of Oil Import Regulation 1 (Revision 5) as amended states that "there is in the Department of the Interior, an Oil Import Appeals Board."[5] More specifically, the 1972 edition of the United States Government Organization Manual indicates that the Oil Import Appeals Board occupies a position in the Office of Hearings and Appeals,

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[4] Oil Import Regulation 1, 24 Fed. Reg. 1907 (1959), at §21.

[5] Oil Import Regulation 1, as amended, "Oil Import Regulation," 32 A C.F.R. ch X, OI Reg. 1, p. 193 (1972).

which is in turn, accountable to the Undersecretary of the Interior.[6] The Oil Import Appeals Board is located in the same office spaces as the Office of Hearings and Appeals on the eleventh floor of Ballston Towers at 4015 Wilson Boulevard in Arlington, Virginia, 22203. The telephone number of the board is 202-343-4754.

Membership

The Report of the Special Committee to Investigate Crude Oil Imports of March 6, 1959, suggested that the Oil Import Appeals Board be comprised "of one representative each from the Departments of the Interior, Defense, and Commerce."[7] That suggestion was adopted by President Eisenhower in Section 4 of Proclamation 3279 of March 10, 1959, which authorized the Secretary of the Interior to establish an Appeals Board "comprised of one representative each from the Departments of the Interior, Defense, and Commerce to be designated, respectively, by the heads of such Departments." Section 4 also provided that, "Such representatives are to be the rank of Deputy Assistant Secretary or higher."[8] The authorization of the Proclamation was carried out in Section 21 (a) of Oil Import Regulation 1 which provided:

> (a) There is hereby established an Oil Import Appeals Board, comprised of one representative each from the Departments of Commerce,

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[6] Office of the Federal Register, National Archives and Records Service, General Services Administration, United States Government Organization Manual 1972/1973 (Washington D.C.; United States Government Printing Office, 1972) p.248 and pp. 252-253.

[7] Special Cabinet Committee to Investigate Crude Oil Imports 1957-58, Lewis L. Strauss, Chairman, Report, March 6, 1959, supra note 1.

[8] Presidential Proclamation No. 3279, March 10, 1959, supra note 3.

> Defense, and Interior, designated, respectively, by the Secretaries of such Departments. The Board shall elect a Chairman from its own membership.[9]

The composition of the Board remained constant until the year 1969, when the Cabinet Task Force on Oil Import Control appointed by President Nixon proposed that the membership of the Board would be more representative if the Department of Defense member were replaced by a Department of Justice member.[10] To this end President Nixon issued Proclamation 3969 of March 10, 1970, modifying Proclamation 3279 by striking "Defense" and substituting "Justice". The change was made on the rationale that the criteria applied by the Board would be more objective and more susceptible to judicial review. Furthermore, the requirement, that "such representatives shall be the rank of Deputy Assistant Secretary or higher," was dropped.[11]

Although for years Oil Import Regulation (1) provided that the Board elect a chairman from its own membership, this provision has recently been altered, and the representative of the Department of the Interior is now the Board's permanent Chairman. The Chairman serves full time while the other two representatives serve only part time.

Present members of the Oil Import Appeals Board are:

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[9] Oil Import Regulation 1, supra note 4 §21(a).

[10] Cabinet Task Force on Oil Import Control 1969-1970, George P. Schultz, Chairman. The Oil Import Question (Washington, D.C.: U. S. Government Printing Office, February 2, 1970), p. 139.

[11] Presidential Proclamation No. 3969, March 10, 1970, 35 Fed. Reg. 4321, 3 C.F.R., 1966-1970 Comp., p.470.

Acting Chairman	Daniel Harris	Department of Interior
Member	Seth Bodner	Department of Commerce
Member	George H. Schueller	Department of Justice

Authority of the Board

The report of the Special Committee to Investigate Crude Oil Imports of March 6, 1959, recommended that the Secretary of the Interior be authorized:

> . . . to empower the Board on grounds of hardship, error or other relevant special consideration, but within the limits of the maximum levels of imports established to modify allocations, to grant allocation of crude oil and unfinished oils in special circumstances to companies with importing histories who did not qualify under the forgoing provisions and to review the revocation or suspension of any allocation or permit.[12]

These recommendations were adopted, and on March 10, 1959, in Section 4 of Proclamation 3279, President Eisenhower authorized the Secretary of the Interior to empower the Appeal Board:

> . . . on grounds of hardship, error, or other relevant special consideration, but within the limits of the maximum levels of imports established . . .
> (1) to modify any allocation made to any person under the regulations issued pursuant to Section 3 of this proclamation,
> (2) to grant allocations of crude oil and unfinished oils in special circumstances to persons with importing histories who do not qualify for allocations under such regulations, and (3) to review the revocation or suspension of any allocation or license.[13]

The authority granted the Secretary of the Interior in Proclamation 3279 to empower the Oil Import Appeal Board, was executed in Section 21 (b) of Oil Import Regulation 1, which provided:

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[12] Special Cabinet Committee to Investigate Crude Oil Imports 1957 - 1958, Lewis L. Strauss, Chairman. Report, supra note 1.

[13] Presidential Proclamation No. 3279, March 10, 1959, supra note 3.

> (b) The Appeals Board shall hear and consider petitions and appeals by persons affected by this regulation and may on grounds of hardship, error, or other relevant special consideration, but within the limits of the maximum levels of imports established in Section 2 of Proclamation 3279:
> (1) Modify any allocation made to any person under this regulation;
> (2) Grant allocations of crude oil and unfinished oils in special circumstances to persons with importing histories who do not qualify for allocations under this regulation; and
> (3) Review the revocation or suspension of any allocation or license.
>
> The decisions of the Appeals Board on petitions and appeals shall be final.[14]

The authority was also set out in the Oil Import Appeals Board Rules and Procedures.[15]

In Presidential Proclamation 3328 of December 10, 1959, President Eisenhower authorized the Secretary of the Interior to broaden the powers of the Oil Import Appeals Board to enable the Board to grant allocations of finished products on the ground of exceptional hardship to persons who did not qualify for allocations under the regulations.[16] This proclamation was subsequently reflected in Section 21 (b) regulations[17] and Section 3 of the Oil Import Appeals Board Rules and Procedures.[18]

In Amendment 48 to revision 5 of Oil Import Regulation 1 of December 14, 1972, the Director of the Office of Emergency Preparedness

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[14] Oil Import Regulation one, supra at note 4, §21(b).

[15] O.I.A.B. Rules and Procedures, 24 Fed. Reg. 2622 (1959).

[16] Presidential Proclamation No. 3328, December 10, 1959, 24 Fed. Reg. 10133. 3 C.F.R., 1959 - 1963, Comp., p. 63.

[17] Oil Import Regulation 1, (Rev. 1) 24 Fed. Reg. 4654 §21(b) as amended.

[18] O.I.A.B. Rules and Procedures, 24 Fed. Reg. 10444 (1959).

allowed and addition 40,000 b/d of imports for Districts I - IV and an additional 5,000 b/d of imports for District V to be made available to the Oil Import Appeals Board.[19]

In Proclamation 4202 of March 23, 1973, President Nixon enpowered the Oil Import Appeals Board to take action without regard to the maximum levels of imports established by Proclamation 3279 as amended.[20] This proclamation was subsequently reflected in Section 21(b) of the Regulations[21] and Section 3 of the Oil Import Appeals Board's Rules and Procedures.[22]

Presidential Proclamation 4210 empowered the Appeals Board subject to the general direction of the Chairman of the Oil Policy Committee,

> (1) within the limits of the maximum levels of imports established in this proclamation, to modify on the grounds of error any allocation made to any person under such regulations;
> (2) without regard to the limits of the maximum levels of imports established in this proclamation
> (i) to modify on the grounds of exceptional hardship, any allocation with respect to which license fees are not applicable made to any person under such regulations;
> (ii) to grant allocations of imports to which license fees will not be applicable of crude oil and unfinished oils in special circumstances to persons with importing histories who do not qualify for allocations under such regulations; and
> (iii) to grant allocations of imports, to which license fees shall not be applicable, of finished products on the grounds of exceptional hardship; and to assure that adequate supplies of crude oil, unfinished oils, and finished products are made available to independent refiners or established marketers who are

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[19] O.I. Reg. 1 (Rev. 5) Amend. 48. 37 Fed. Reg. 26831 (1972).

[20] Presidential Proclamation No. 4210, April 18, 1973, 38 Fed. Reg. 9645.

[21] O.I. Reg. 1 (Rev. 5) Amend. 55 38 Fed. Reg. 8432 (1973).

[22] O.I.A.B. Procedural Regulations, 38 Fed. Reg. 12118 (1973).

> experiencing exceptional hardship or in emergencies requiring in its judgment, the grant of allocations to them, and to review the revocation or suspension of any allocation or license.[23]

These modifications were again reflected in Section 21(b) of the Regulations[24] and Section 3 of the Oil Import Appeals Board Rules and Procedures.[25]

Petitions, Briefs, and Hearings

Proceedings before the Oil Import Appeals Board are commenced by the filing of a written petition. The petition must clearly indicate on its face that it is a petition and must be filed in sextuplicate. The petition is required to contain the decision of Director of the Office of Oil and Gas, if any, the applicable provisions of the Oil Import Regulations, the ground, and a detailed statement of the facts in support of the ground for the petition, the relief sought by the petitioner, and the justification for the relief sought. In the event there are several grounds, each needs to be stated separately, numbered, and supported.[26]

A petition requesting the grant or modification of an allocation should be filed not more than thirty days after the beginning of the allocation period. A petition requesting the review of the suspension or revocation of an allocation or license should be filed

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[23] Presidential Proclamation 4210, April 18, 1973, supra note 20.

[24] O.I. Reg. 1 (Rev. 5), Amend. 57, 38 Fed. Reg. 8432 (1973).

[25] O.I.A.B. Procedural Regulations, 38 Fed. Reg. 12118 (1973).

[26] O.I.A.B. Rules and Procedures, 38 Fed. Reg. 2684 (1973), §6.

not more than thirty days after receipt of a notice of suspension or revocation from the administrator of the Oil Import Administration.[27] Under extraordinary circumstances the Oil Import Appeals Board may entertain a petition, not filed in a timely manner. There must be a determination by the Board, however, that the extra-ordinary circumstances caused the delay.

The place of filing is the Office of the Oil Import Appeals Board, Office of Hearings and Appeals, Department of the Interior, 4015 Wilson Boulevard, Arlington, Va., 22203.[28]

Briefs in support of petitions may be submitted voluntarily by the petitioner either with the petition or at any time prior to a hearing. The Board may also compel the submission of briefs or other information it considers necessary for the disposition of a case either before or after the hearing.[29]

A request for a hearing by the petitioner must be in writing and filed along with the petition. The Board may also of its own initiative require a hearing on any petition. A hearing may be for the purpose of receiving testimony, oral argument, or both. Hearings are not usually scheduled on petitions if the petitions are outside the jurisdiction of the Board or they clearly do not establish a valid basis of relief. Notice of the time and place of the hearings are given to the petitioner

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[27] Id. at §5.

[28] Id.

[29] Id. at §12.

fourteen days in advance.[30]

Hearings are held in public and are informal in nature. Petitioners may offer oral or written evidence. Although the formal rules of evidence do not apply, evidence is subject to ruling by the presiding Board Member on irrelevance, immateriality, and repetitiousness. Arguments bearing on policy questions are not received. The order of presentation of evidence and arguments is determined by the presiding Board Member as is the time of oral presentations and arguments. The Board prefers to have evidence submitted in written form. However, testimony may be received under oath or affirmation. Witnesses are subject to examination by the Board Members.[31]

Transcripts and Records

Transcripts of the hearings of the Oil Import Appeals Board are taken by an official reporter and copies may be purchased from the official reporter.[32] Transcripts are also available for public inspection, free of charge, at the office of the Board.

An official record is maintained by the Board. It includes the petition, exhibits matters of official notice, hearing transcript, written statements of interested persons along with all the miscellaneous papers filed voluntarily or requested by the Board. This record provides the basis for any decision by the Board.

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[30] Id. §7.

[31] Id. §10.

[32] Id. §10(d).

The Standards Applied

Historically there have been essentially four grounds on which an appeal to the Oil Import Appeals Board could be taken. An examination of each of these grounds as interpreted in the light of the decisions of the Board follows:

Under the Proclamation the Board is first empowered to modify any allocation to any person on the grounds of hardship or error. The term modify has been interpreted to mean that the Board is restricted to action on allocations previously granted by the Oil Import Administration.

Correlatively the Board was thought to be without power to entertain an appeal from any person who has been denied an allocation. This was pointed out in the Great Lakes Carbon decision in January, 1968.[33] In that case it was also recommended that the regulations be amended to extend the Board's jurisdiction to the consideration of appeals from a denial of an allocation by the Oil Import Administrator. The insertion of the disjunctive or between the words hardship and error would tend to indicate that either hardship or error could be a separate and distinct ground for relief. There has, however, been some confusion on this point and both words have been used somewhat interchangeably especially where the error induced the hardship. The indiscriminate use of hardship and error has been committed by both petitioners and Board Members.

Petitions alleging hardship have generally fallen into two

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[33] Great Lakes Carbon Corporation, O.I.A.B. Case No. P-13 (1968).

categories. The first type might be designated natural disaster and the second type, economic disaster.

There have been a number of natural disaster hardship appeals in which the petitioner's refinery inputs have been diminished by fires, hurricanes, and the like, and he has petitioned the Board to increase his allocation. Although relief has been granted in three of these cases, only one -- the Petrofuel case - was granted on the basis of hardship.[34] In a series of other cases relief has been denied.

There have also been a number of economic disaster hardship appeals in which the petitioner discovers that his business is unprofitable. The Board has turned down these appeals under the program for crude and unfinished oils. This position has been upheld in Texas City Refining, Inc. v. Udall, et al..[35]

The second power of the Board under the Proclamation is to grant allocations of crude oil and unfinished oils in special circumstances to persons with importing histories who do not qualify for allocations under the Regulations. Those familiar with the adoption of the Mandatory Oil Import Program believed that this clause was drafted for the purpose of granting an allocation to one importer, Gabriel, who was the only historical importer disqualified by the rule that an eligible importer must have domestic refinery capacity. In its very first case, the Board granted Gabriel an allocation.[36] Later this clause was

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[34] Petro Fuels Refining Co., Inc., O.I.A.B., Case No. J-9 (1963).

[35] Texas City Refining, Inc., v. Udall, Civil No. 122-65 (D. D. C. 1965).

[36] Gabriel Oil Company, O.I.A.B. Case No. 1 (1959).

stretched by the Board to grant an allocation to Texas Asphalt, which had no importing history except allocations granted by the Administrator and had domestic refining capacity and thus qualified under the Regulations.[37] Both of these have been continuing allocations requiring no further action by the Board. An allocation was granted to Signal Oil for one period only.[38] Subsequently the Board granted allocations under this clause to two other companies -- Danaho[39] -- and Petroleum Specialties[40] -- each with domestic refining capacity. These allocations have required separate decisions by the Board in each allocation period and although the Board has granted them in succeeding periods, they are not continuous. All of those receiving allocations under this provision have been exempted by the Board from Section 17 of the Regulations, which require that importers must process in their own refinery, the oil imported or domestic oil received in exchange for it.[41] Three additional cases have been presented to the Board which involved similar fact situations -- Pana,[42] Waskom,[43] and Empire.[44]

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[37] Texas Asphalt and Refining Company, O.I.A.B Case No. 9 (1959).

[38] Signal Oil and Gas Company, O.I.A.B. Case No. 18 (1959).

[39] Danaho Refining Co., O.I.A.B. Case No. K-5 (1964).

[40] Petroleum Specialties, Inc., O.I.A.B. Case No. K-11 (1964).

[41] Oil Import Regulation 1, (Rev. 5) 31 Fed. Reg. 7745 (1966), as amended at §17.

[42] Pana Refining Co., O.I.A.B. Case No. L-8 (1964).

[43] Waskom Natural Gas Corp., O.I.A.B. Case No. L-12 (1964).

[44] Empire Petroleum Company, O.I.A.B. Case No. P-32 (1967).

The Board rejected these petitions because they lacked special circumstances. An allocation was given to Empire in June of 1968, but no waiver of Section 17 was granted.[45]

The third power of the Board under the Proclamation is to grant allocations of finished products on the grounds of exceptional hardship to persons who do not qualify for allocations under such regulations. This power was not contained in the Proclamation in its original form. Accordingly the Board rejected all petitions for finished product allocations. Proclamation 3328 of December 10, 1959, amending Proclamation 3279 added the power.[46] Although grants have now been authorized under this provision, the Board did not grant an appeal, except for residual, under its authority until May 5, 1967.[47] Since then the Board has made several more allocations including its first continuing allocation of finished products when it authorized Tropical Gas to import 522 barrels per day.[48] Prior to this authorization, the Board had turned down the same appeal every year since the Mandatory Oil Import Program began.

The final power of the Board under the Proclamation is to review the revocation or suspension of any allocation or license. This is somewhat extraordinary and unusual since two different forms

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[45] Empire Petroleum Company, O.I.A.B. Case No. Q-43 (1968).

[46] Presidential Proclamation No. 3328, December 10, 1959, 24 Fed. Reg. 10133, 3 C.F.R., 1959 - 1963 Comp., p. 63.

[47] John J. Hudson, Inc., O.I.A.B. Case No. P-20 (1967).

[48] Tropical Gas Co., Inc., O.I.A.B. Case No. P-12 (1967).

of appeal are provided for. Section 20 of the Regulations provides that the Director must grant the petitioner a hearing prior to revoking or suspending an allocation or license, and apparently a petitioner must have formal hearings before both the Director and the Board before exhausting his administration remedies.[49]

Decisions of the Board

The Oil Import Appeals Board acts on petitions as it deems appropriate. A decision of the Board is made when two or more members of the Board consider a petition, concur on a decision, and put it in writing.[50] Decisions are final and copies are furnished the petitioner. The decisions of the Board are not officially published.

Changes in Administration, Board authority, and membership have resulted in changes in policy. These changes make it virtually impossible to synopsize the decisions of the Board in any consistant form.

The Eisenhower administration appointed the first Board. This Board conservatively interpreted its jurisdiction. It turned down most petitions during its initial years and limited itself to rectifying hardships arising out of misinterpretations of the Regulations. During the first two months of the Board's existence, it received eighty-one appeals. It granted only six. Thereafter the original Board granted only one additional appeal.

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[49] Oil Import Regulation 1, (Rev. 5), 31 Fed. Reg. 7745 (1966) as amended at §20.

[50] O.I.A.B. Rules and Procedures, supra note 26, §17.

When the Kennedy administration took office in January of 1961, the members of the original Oil Import Appeals Board lost their jobs. In May of 1961, President Kennedy appointed new members to the Board. The Kennedy Board more liberally interpreted its jurisdiction and greatly expanded the definition of the hardship standard. Needless to say, many of the decisions of the old Board were overturned.

During the first allocation period under the Kennedy administration, the Board had a new Chairman; the Regulations were changed to provide that when the Board granted an increased quota, it would not be effective until the next quota period, and that the administrator be given notice of the increase at least thirty days before the beginning of the new quota period.[51] The reason for following the principle that grants become effective the next allocation period was that grants by the Board during the same period resulted in imports above the fixed level. More recently a reserve has been set aside for the Board at the outset of the allocation period so that the Board's grants may take effect immediately.

The two continuing allocations, Gabriel[52] and Texas Asphalt,[53] were not, however, deducted from the Board's reserve but were treated by the Administrator as historical allocations and subtracted from the total before the remainder was allocated to refiners on input formula.

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[51] O.I. Reg. 1 (Rev. 2), Amend. 10, 27 Fed. Reg. 5954 (1962), §21.

[52] Gabriel Oil Company, supra note 36.

[53] Texas Asphalt and Refining Company, supra note 36.

Unlike with finished products, there is no time limit on the Board for decisions on crude oil. Consequently, some petitions for crude oil allocations have rested peacefully without action for more than a year.

During the last few years, starting with the end of the Johnson administration and continuing through the Nixon administration, the Oil Import Appeals Board assumed a vast new and enourmously important function in the administration of the Mandatory Oil Import Program. During this period the Board has been used increasingly as a device to contend with politically sensitive and controversial areas. The allocation of residual fuel oil in Districts II - IV, the allocation of Canadian crude oil, and the allocation of Number 2 heating oil to New England markets are specific examples. This alleviated the necessity of drafting and promulgating binding rules and regulations to deal with political problems and permitted the Board to follow a more flexible case by case ad hoc approach. The jurisdiction of the Oil Import Appeals Board is scheduled to expire April 30, 1980.[54]

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[54] Presidential Proclamation No. 4210, April 18, 1973, supra note 20, §5(c).

CHAPTER VIII

JUDICIAL REVIEW

A Flurry of Early Litigation

Eastern States Petroleum and Chemical Corp. v. Seaton[1] presented an action for declaratory and injunctive relief seeking to have the Voluntary Oil Import Program declared null and void. The plaintiff in the case was a corporation engaged in refining crude oil and selling petroleum products. The defendants were the Secretary of Defense, the Secretary of the Interior, the Under Secretary of the Interior and the Oil Import Administrator. All of the defendants were responsible directly or indirectly for the administration of the Voluntary Oil Import Program.

The question was whether the Voluntary Oil Import Program was valid. Judge Holtzoff held that it was reasoning that the President had promulgated an executive order relating imports of oil into the United States and purchases of oil by the government and that there was a dual legal basis for that order, first, in the Buy American Act and, second, in the power of the government to decide what products it would or would not purchase for its own use. The administrative Procedure Act was held inapplicable to governmental activities culminating

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[1] Eastern States Petroleum and Chemical Corp. v. Seaton, 163 F. Supp. 797 (D.D.C. 1958).

in the executive order.

From the adverse judgment rendered against it, the corporate plaintiff appealed in Eastern States Petroleum and Chemical Corp. v. Seaton.[2] The issue on appeal was whether plaintiff's complaint had stated a cause of action. The holding was that it had. Although Judges Miller, Bazelon, and Burger concurred in the results in a per curiam decision because the appellant had tendered the issue of arbitrary action by appellees in implementation of the Voluntary Oil Import Program by sufficient allegations in its complaint, Judge Burger would have dismissed the appeal as frivolous. Accordingly the case was remanded.

In Eastern States Petroleum and Chemical Corp. v. Seaton[3] the case again came on for hearing on remand. The action was for a preliminary injunction to restrain cancellation of two government procurement contracts and any discrimination in the future in its sales to the government because of its importation of oil above its allotted quota under the Voluntary Oil Import Program. On the question of whether the injunction should be granted, Judge Youngdahl came to a negative conclusion because there was ample evidence to sustain the administrators determination and because the plaintiff had not made a substantial showing of arbitrariness in the administrator's action.

As a sequel, it is noted that this case never actually went to

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[2] Eastern States Petroleum and Chemical Corp. v. Seaton, 271 F. 2d 457 (D.C. Cir. 1958).

[3] Eastern States Petroleum and Chemical Corp. v. Seaton, 165 F. Supp. 363 (D.D.C. 1958).

trial on the merits but was settled by a compromise on the issue of whether the allocation should have been increased due to an error in reporting imports.

The compromise included an agreement by Eastern States that it would not appeal the decision in Eastern States Petroleum and Chemical Corp. v. Walker.[4] That case involved an action for a declaratory judgment and an injunction in which the plaintiff, an operator of a petroleum refinery, sought to enjoin the defendant Collector and Deputy Collector of Customs from refusing to allow importation of any oil in excess of its import allocation under the Mandatory Oil Import Program and for a declaratory judgment that the operator was entitled to a larger import allocation than it received under the program. On the inquiry as to whether it might have its allocation adjusted and its injunction granted, Judge Ingram held in the negative reasoning that the court was without authority to increase the plaintiff's import allocation since this was an administrative and not a judicial function. Because the plaintiff could not lawfully import in excess of its allocation unless it could obtain an increased allocation from the Appeals Board, the members of that Board were indispensable and the action had to be dismissed for failure to join them.

In the case of United States Oil and Refining Co. v. Hull,[5] the plaintiff petitioned the court for a temporary restraining order which

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[4] Eastern States Petroleum and Chemical Corp. v. Walker, 177 F. Supp. 328 (S.D. Tex. 1959).

[5] United States Oil and Refining Co. v. Hull, Civil No. 2415 (W.D. Wash. 1959).

would allow it to import unfinished oil until the Oil Import Appeals Board decided its pending appeal. Subsequently, however, the Appeals Board found that no increase in allocation could be granted. Thereafter the court order was no longer effective.

In Texas American Asphalt Corp. v. Walker[6] the action was again for declaratory and injunctive relief. The plaintiff was the operator of a petroleum refinery and the defendant was a Collector of Customs. The plaintiff sought to enjoin the defendant from preventing it from importing crude oil in non-compliance with the Mandatory Oil Import Program and also sought a declaratory judgment that it was entitled to import crude oil at the rate of 10,000 b/d. The issue was whether the plaintiff was entitled to the declaratory and injunctive relief sought. Judge Ingraham held that it was not, because the court could not give the plaintiff any import allocation or license and because the plaintiff could not legally import oil without an allocation and license from the administrator or the Appeals Board, they were indispensable parties and the action had to be dismissed for failure to join them. The court also found that plaintiff's refinery could obtain domestic crude by ordinary and continuous means of transportation and that the plaintiff did not have an actual importing history and therefore was not entitled to an Appeals Board allocation. The plaintiff was not denied due process by the fact that it could be forced out of business by the government regulation.

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[6] Texas American Asphalt Corp. v. Walker, 177 F. Supp. 315 (S.D. Tex. 1959).

Pava v. Hutchinson[7] involved a challenge by the plaintiff to the legality of the Mandatory Oil Import Program. He contended that Section eight of the Trade Agreement Extension Act of 1958 was an unconstitutional delegation of legislative power. In addition he maintained that Presidential Proclamation 3279 was invalid as beyond the President's authority and that Oil Import Regulation I is unconstitutional as applied to plaintiff. A motion to dismiss the complaint or in the alternative for summary judgment, asserting that the regulations were valid, was filed by the government. Granting the government's motion to dismiss, the court held that Pava had not exhausted his administrative remedies. After the Collector of Customs denied him the right to import, he could have made application pursuant to the regulations to the Oil Import Administrator for permission to import. Since he did not apply, he did not exhaust his remedies, and the government's motion was granted.

In Gulf Oil Corp. v. Seaton[8] an injunction was sought in a suit filed by Gulf. The method of allocating residual fuel oil quotas among eligible importers was challenged. Oil Import Regulation I, as amended, was alleged by Gulf to be unlawful and void in that it did not execute Presidential Proclamation 3279 by providing for a fair and equitable distribution of residual oil. Gulf considered the distribution unfair and inequitable because: first, allocations based upon proportions of the total residual imports in 1957 did not take into account subsequently

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[7] Pava v. Hutchinson, Civil No. 59 - 691 - S (D. Mass. 1959).

[8] Gulf Oil Corp. v. Seaton, Civil No. 1137 - 60 (D.D.C. 1960).

altered circumstances with the result that two companies were allocated forty-six percent of the total residual import, giving them an unfair competitive advantage; second, the allocation method gave no weight to residual fuel sales, Gulf having eight and nine-tenths percent of the total residual imports in 1960. Because of this Gulf found itself unable to meet customer demands; third, the different treatment of crude imports was an unreasonable and arbitrary classification which had as a consequence the confiscation of Gulf's property. A motion to dismiss or in the alternative for summary judgment was made by the government. It contended that Gulf's crude oil allocation was the largest of any company's and that Gulf's net income had not suffered growing at a rate of more than four million dollars per year under the Mandatory Oil Import Program.

Although Gulf's competitors were granted larger residual fuel oil allocations, historically they imported much more than Gulf. The government also maintained that allocations based on 1957 imports were valid and that granting the relief would usurp an administrative function by granting Gulf an allocation without its having a license and that such an injunction would give unwarranted relief rather than preserving the status quo. The Court held in favor of the government on the motion for summary judgment concluding that there was not genuine issue of material fact. In addition the court found that the Oil Import Regulations met the test of fair and equitable distribution as laid down by Presidential Proclamation 3279 and that using imports in the base year, 1957, as a basis for allocating residual fuel oil was not arbitrary or unreasonable.

Although an appeal was taken to the Court of Appeals for the District of Columbia, it was withdrawn after the residual oil program was amended.

Standard Oil v. Udall[9] presented an action for a declaratory judgment and an injunction. The plaintiff, Standard Oil Company of New Jersey, contended that the "sliding scale" under which larger proportionate quotas are given to refiners with smaller total inputs is "arbitrary, unfair, inequitable, and discriminatory" and not in accordance with Presidential Proclamation No. 3279 which provides "for a fair and equitable distribution among refiners in relation to refinery inputs."

The requests of several independents and one major, Atlantic, to intervene in behalf of the government were denied by the court and the parties appealed in Atlantic Refining Co. v. Standard Oil Co.[10] Remitting a bit the court then allowed Atlantic to file an amicus curiae brief. The appeal of the independents was successful and in June, 1962, the Court of Appeals for the District of Columbia granted their request to intervene on the ground that their quotas would be reduced if Jersey was to prevail and the sliding scale be abolished. Atlantic's request was denied, however, because Atlantic received its quota on a historical basis and its quota would not be affected regardless of the outcome of the suit. Then in October of 1962, the government's motion for summary judgment was denied. After the Interior Department amended its regulations making the "sliding scale" applicable

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[9] Standard Oil v. Udall, Civil No. 24296 - 61 (D.D.C. 1961).

[10] Atlantic Refining Co. v. Standard Oil Co., 304 F.2d 387 (D.C. Cir. 1962).

only to the first 100,000 b/d of refinery input and the Proclamation was modified to provide that the Secretary could make a distribution of quotas "on the basis of a graduated scale." The Standard Oil Company of New Jersey moved to dismiss its action.

A Stabilizing Decision Rate

In Steuart Petroleum Co. v. Boutin[11] there was an action for a declaratory judgment and an injunction. The plaintiff was the operator of a storage terminal in the Washington, D.C. area, where it held the contract to terminal and deliver residual fuel oil to the United States Government buildings in the D.C. area. The contract had been held by plaintiff for a number of years and the particular version of the agreement held at time of the case extended through April, 1963. During the month of August, 1962, the General Services Administration circulated an invitation for bids for the coming heating season. The plaintiff submitted a bid conditioned on the government providing a special import quota. The bid was rejected as non-responsive. The government instead accepted the bid of the Hess Oil and Chemical Corporation. The plaintiff argued that the entire residual oil import program should be held illegal and that the government's action in awarding quotas should also be held illegal. The plaintiff's theory was first, that the delays and refusals to remove residual fuel oil import controls could be attributed directly to political considerations out of deference to the coal industry political lobby and did not have any basis in fact or otherwise with respect to the effect on or the impairment of national security.

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[11] Steuart Petroleum Co. v. Boutin, Civil No. 2974 - 62 (D.D.C. 1962).

Second, the action of the Oil Import Administration in recognizing only those persons as importers who are on record as having paid the import duty is unfair because it does not recognize the position of the real importers such as the plaintiff. Third, the government is excluded as a "person" under the Oil Import Regulation and consequently it is not required to have an import license. Moreover, the administrator has granted a license to the Defense Petroleum Supply Center and not to the General Services Administration. The plaintiff also requested that the government be restrained from breaching its terminal contract by its award to Hess. Plaintiff's request for an injunction was initially granted by the District Court but was subsequently denied by both the District Court and the Court of Appeals, and the case was later withdrawn by the plaintiff.

In Steuart Petroleum v. Udall[12] an action was brought for a permanent injunction by the Steuart Petroleum Company, a Washington, D.C. terminal operator and distributor, as plaintiff seeking to restrain the defendant, Secretary of the Interior or his agents, from continuing or maintaining any import levels for residual fuel oil. The complaint charged that there was no longer any legal basis for the continued control of residual oil imports because the report of the Director of the Office of Emergency Preparedness issued in February, 1963, did not make a finding that residual imports threatened to impair the national security; accordingly there was no legal authority under Section 232 (b) of the Trade Expansion Act of 1962, for the

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[12] Steuart Petroleum Co. v. Udall, Civil No. 1317 - 63 (D.D.C. 1963).

the President to adjust imports of residual fuel oil. In the alternative Steuart charged that the granting of eighty to eighty-three percent of the total allocations to those who had a history of imports during the base year, 1957, was not a "fair and equitable" distribution as required by the Proclamation, that the provision for an Appeals Board is illegal for it establishes no guide lines to measure "exceptional hardhsip", that the failure of the Appeals Board to grant an increased allocation to Steuart on the basis of exceptional hardship was arbitrary and capricious, that the administrators interpretation of the word "importer" to denote only the person who in 1957 was recorded as having paid import duties ignores the tradition of the industry and the real party in interest, and finally, that the regulation that any increase granted by the Appeals Board cannot take effect until the following quota period is contrary to the due process clause of the Constitution. The case was dismissed on motion by Steuart on April 5, 1965.

Sun Oil Co. v. Udall[13] was a case in which the plaintiff, Sun Oil Company, had reported in its application for an allocation filed with the Oil Import Administrator that it had terminal inputs of residual fuel oil averaging 9,035 barrels per day during the period of January 1, 1962, to December 31, 1962. It later claimed to have discovered that it had erroneously omitted an average of 4, 668 barrels per day from its report and that actually its inputs of residual fuel oil were 13,703 barrels per day during the period. Sun immediately

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[13] Sun Oil Co. v. Udall, Civil No. 544 - 64 (D.D.C. 1964).

made the error known to the Administrator and filed a petition with the Oil Import Appeals Board. The Oil Import Appeals Board interpreted its authorization in both the Proclamation and Regulations "to modify on the ground of exceptional hardship or error any allocation made to any person" to apply solely to errors made by the government and decided that the authority to grant relief on the ground of "error" should not be extended to a case where the error was committed by the petitioner unless it resulted in an "exceptional hardship". Sun therefore took the position that the decision of the defendant Oil Import Appeals Board was arbitrary, capricious and a manifest abuse of discretion in that it failed to adjust plaintiff's allocation to rectify error as required by Presidential Proclamation 3279 and prayed the court to direct the Administrator to grant plaintiff an increase of 1,247 barrels per day for one year as compensation. The government moved for summary judgment and the court granted the motion. The court was of the opinion that the oil Import Appeals Board had complied with the applicable law and regulations, that there was a rational basis for its conclusions and that its decision should not be disturbed.

In Iandoli v. Udall[14] the plaintiff brought suit for a declaratory judgment to have the Mandatory Oil Import Program declared null and void because the memorandum from the Director of the Office of Emergency Preparedness to the President of February 13, 1963, did not make a finding that residual imports threatened national security. Furthermore, the plaintiff claimed that the Oil Import Regulations

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[14] Iandoli v. Udall, Civil No. 532 (S.D.N.Y. 1964).

restricting residual allocations to importers of record of 1957 and to operators of deep-water terminals were illegal because they were inequitable and discriminatory. Plaintiff contended it did not maintain a historic import position in 1957, but it was a historic "thruputter", storing cargoes of oil in terminals and making withdrawals as needed. In 1958 plaintiff started construction of a deep-water terminal, but in 1959 the original Regulations authorized quotas only to importers of record during 1957. Plaintiff petitioned the Oil Import Appeals Board for an allocation urging that its terminal then under construction would be jeopardized without the benefit of a quota. The petition, however, was denied by the Board. Plaintiff states it was therefore forced to sell its terminal. A short time later the Regulations were amended to allow import allocations to owners of deep-water terminals regardless of the date of terminal construction. Plaintiff subsequently withdrew his case.

In Pancoastal Petroleum Ltd. v. Udall,[15] plaintiff was a Bermuda Corporation whose affiliate, Pancoastal de Venezuela, C.A., owned oil concessions in eastern Venezuela jointly with Varco, an affiliate of the Atlantic Refining Co.. Varco operated the concessions for the joint account of plaintiff and itself with each bearing one-half of all concession drilling and development costs and sharing one-half of production. Plaintiff never exercised its option to take crude but always sold its share to Varco. Plaintiff argued that the crude purchased from it was a part of the basis of Atlantic's original

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[15] Pancoastal Petroleum Ltd. v. Udall, Civil No. 267 - 64 (D.D.C. 1964).

quota under the Voluntary Oil Import Program. Plaintiff contended that this situation continued in the defendant's method of allocation with the result that Atlantic received a 2,527 b/d crude allocation that belonged to plaintiff. Because of growing differences between the prices Varco paid plaintiff and the prices on the gulf coast caused largely by the program, plaintiff states it suffered a severe financial loss. Consequently plaintiff disposed of its interest in 1963. A petition was then filed with the Oil Import Appeals Board by the plaintiff. The petition alleged special circumstances and a previous importing history, and on that basis, requested an allocation. Because the petition was not timely filed, the Board denied Pancoastal an opportunity for a hearing. The Board also held against Pancoastal, reasoning that its activity did not amount to domestic importation of oil.. The denial of the opportunity to be heard was a portion of the "arbitrary and illegal" action which precluded a chance to deomonstrate that it had a real importing history, argued the plaintiff. The deprivation of an import license and the necessity for it to dispose of its properties had caused it continuing irreparable damages the plaintiff contended. Therefore it prayed the court for a declaratory judgment that it was entitled to import 2,527 b/d of crude oil and an order requiring the defendants to issue a license. Defendants replied that Pancoastal had failed to state a cause of action upon which relief could be granted and moved for summary judgment, taking the position that plaintiff's sale of oil to Atlantic in Venezuela could not be termed an import and that the definition of "importing history" in Section 22 (j) of the Regulation was fully consistent with the

Proclamation. Plaintiff also moved for a summary judgment urging that the Regulation's limiting of importing to "entries for consumption" and "withdrawals from warehouse for consumption" as interpreted by the Board imposed an arbitrary restriction on the meaning of the term "import", and that emphasizing the passage of title and who entered the goods and paid the custom duties ignored the "practical aspects of the transaction." Judge Leonard P. Walsh granted the government's motion for summary judgment and dismissed the complaint. He reasoned that the case presented no material issue of fact since the record failed to demonstrate that Pancoastal ever imported a drop of oil into the United States on its own account. He held that the Board's disposition of the petition was reasonable and complied with the Proclamation, the Regulations, and due process of law.

In Pancoastal Petroleum, Ltd. v. Udall[16], Pancoastal appealed the decision in the preceding case to the D. C. Circuit Court of Appeals where the ruling of the District Court was affirmed.

In Texas City Refining, Inc. v. Udall[17] there was an action for a declaratory judgment to direct the Appeals Board to reconsider plaintiff's petition and to grant it relief in accordance with such judgment. Texas City maintained that the record of the petition and hearing before the Board clearly showed that its losses in earnings were attributable to the Oil Import Program. The Oil Import Appeals Board held that the losses were due to gasoline price wars, depressed

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[16] Pancoastal Petroleum, Ltd. v. Udall, 348 F 2d 805 (D.C. Cir. 1965).

[17] Texas City Refining, Inc. v. Udall, Civil No. 122 - 65 (D.D.C. 1965).

product prices, and intensive marketing efforts by the majors and denied relief. The plaintiff argued that these factors were nevertheless the direct result of the Program because its operation permitted the majors to obtain raw material at lower cost and thus to sell at reduced prices and thereby to depress the wholesale price level at which plaintiff must sell its product. The plaintiff continues that. "The Board has thereby adopted a standard of hardship which excludes virtually all forms of hardship which may exist in the petroleum industry. In so doing the Board renders the term 'hardship' as used in the President's Proclamation a nullity." Plaintiff also charged the Board with further error: in failing to recognize 7,000 b/d of plaintiff's historical import rate because it was comprised of unfinished oils although it was used as feedstock; in allowing higher allocations to competitors who also sometimes enjoyed the benefits of exempt Canadian crude and higher ratios of import allocations from Puerto Rico, the government has acted to drive plaintiff from its markets; in allowing Crown Central Petroleum Corp. a historical basis of 10,200 b/d, the Board discriminated among equals constituting the taking of property without due process of law; and in ruling that the plaintiff's short-term losses were not the result of "an unreasonable participation" in the Program, the Board overstepped its power because the Proclamation required the Administrator to provide for a "fair and equitable distribution among persons having refining capacity." At trial both the plaintiff and the defendant moved for summary judgment. The Court apparently accepting the Justice Department Attorney's claim that Texas City had not carried the burden of proof granted the government's motion for summary judgment and denied Texas City's motion for summary judgment.

In John J. Hudson, Inc. v. Udall[18] the plaintiff, a Rhode Island asphalt maker, asked the Court to set aside a decision of the Oil Import Appeals Board and allow the Company the right to import finished product asphalt. The plaintiff alleged that various major oil companies broke oral promises to supply him or refused to supply him. His efforts with the Oil Import Appeals Board proved similarly unsuccessful. His petition was rejected on the ground that there had been no showing of "hardship" as defined in the Regulations. The Board found that supply of asphalt was available to the plaintiff at market prices. The plaintiff contended that the Board did not recognize as "hardship" the fact that the plaintiff could not secure a supply at a price that would permit him to resell at a profit. The Board's action was asserted to be "unlawful, arbitrary, capricious, abuse of discretion, illegal, void, clearly erroneous, unconstitutional" and even to show "fraudulent purpose." Of the thirty two allegations contained in the complaint the principal charges follow:

The Mandatory Oil Import Program was in restraint of trade and constituted a violation of the Sherman Anti-trust Act;

The preferred position of the historical importers created a monopoly and was unconstitutional;

The Board was illegal for Congress cannot delegate its power to regulate commerce;

The fact that the Board had rejected all "hardship" petitions for asphalt imports "clearly demonstrated a fraudulent intent to circumvent the law in favor of a particular class, namely the major

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[18] John J. Hudson Inc. v. Udall, Civil No. 421 - 67 (D.D.C. 1967).

oil companies;"

At the hearing two of the three Board members were absent. The Defense Department member designated an alternate. This was an illegal delegation of power. As a consequence only one Board member was legally present;

The Defense Department held a finished product import allocation;

Ergo, the Defense Department representative on the Board had a conflict of interest;

The Board's decision was not supported by substantial evidence.

In spite of the foregoing the Court had little trouble in granting the Government's motion to dismiss.

In Skelly Oil Co. v. Udall[19] the action was for a declaratory judgment and injunction. The plaintiff, Skelly Oil Company, complained that the Oil Import Administration had acted illegally in revoking its license to import oil on the ground that it was controlled by Getty Oil Company. It also charged that the administrator errored in using voting power rather than economic ownership or independent management as the proper criterion in interpreting control, and that the administrator failed to grant a hearing as required by both the Regulations and the Administrative Procedure Act. The Appeals Board was alleged to have acted contrary to the law by having acted arbitrarily and capriciously in refusing to

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[19] Skelly Oil Co. v. Udall, Civil No. 297 - 68 (D.D.C. 1968).

recognize the special circumstances and exceptional hardships. The Secretary of the Interior was alleged to have exceeded his authority in denying the company's eligibility because it, in fact, had refining capacity within Districts I - IV and thus was eligible for an allocation under the Proclamation. The plaintiff also moved for interim relief requesting the Court to restore the remaining balance of its allocation for the second half of 1967. The Court ruled on this motion that Skelly was entitled to receive the balance of its 1967 allocation including the right to carry over the portion not imported in 1967 because the Administrator failed to grant the hearing required by Section 20 of the Regulations. The holding, however, backed the Oil Import Appeals Board in refusing to overrule the Administrator.

In Standard Oil v. Udall[20] the action was for declaratory and injunctive relief. Plaintiffs wanted an oil import license issued to them and subsequently declared "void" by defendant Secretary of the Interior Udall, declared valid. It was their position that they had filed an application for an import license prior to the specified filing date. After consultation with the Oil Import Administrator disclosed that they were eligible to claim certain "petro-chemical imports", their application was revised. A license was subsequently issued to plaintiff. Following a widely publicized letter to Secretary Udall from Senator Proxmire of Wisconsin, Secretary Udall decided the license was "void" on the ground that the Administrator had no authority to accept an amendment after the filing date. There was no prior notice to plaintiffs

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[20] Standard Oil v. Udall, Civil No. 19367 (D. Md. 1968).

or hearings of any kind, and no like action had ever been taken against any similarly situated licensee. Plaintiffs maintained that the Secretary of the Interior's arbitrary and capricious action included the purported voiding of their licenses without requisite notice and hearing under constitutional principles, statutory provisions and regulations and contrary to the long established tradition, custom, and practise of the Oil Import Administration to grant licenses on the basis of revised applications. After the Justice Department rendered an opinion that under the circumstances it was probable that a court would rule that the revisions to the application were amendments which related back to the original application and hence the application was timely filed pursuant to the regulations, the Department of the Interior reinstated Standard's oil import license. The Court action was then dismissed.

In National Distillers and Chemical Corp. v. Udall[21] a temporary restraining order and an injunction were sought by the plaintiff, National, against the Secretary of the Department of the Interior and the Oil Import Administrator to prevent the Department of the Interior from adopting, issuing, or enforcing amendments to Section nine and twenty-two of the Oil Import Regulations. The new Regulations were issued to take immediate effect since it would have been impractical to delay the effective date. National complained that it had no opportunity to submit written comments or objections and that there was no good cause shown for the Department to issue the Regulations without

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[21] National Distillers and Chemical Corp. v. Udall, Civil No. 1382 - 68 (D.D.C. 1968).

notice or public comment. National continued that if the amendments became effective or were enforced and allocations were made pursuant to them, it estimated it would suffer a drastically reduced allocation of oil imports, amounting to an approximate thirty percent reduction. The plaintiff noted that this would cause an increased cost of doing business of about $226,000. The plaintiff therefore claimed that the amendments and their manner of promulgation were arbitrary, capricious, and abuse of discretion, and contrary to the law. The government motion for summary judgment was granted, and the case was dismissed.

In Sinclair Oil Corp. v. Smith[22] an action was brought for a declaratory judgment and an injunction by the plaintiff, Sinclair Oil Corp., against the Secretaries of the Army, Commerce, and Treasury in their capacities as members of the Foreign Trade Zones Board, the acting Executive Secretary of the Foreign Trade Zones Board, and the Secretary of the Interior. The purpose of the suit was to terminate proceedings on an application for a Foreign Trade Zone and Sub-zone in Maine which was to be for the benefit of Occidental Petroleum Corporation. The Maine Port Authority, at the insistence of Occidental, made application for the grant of a Foreign Trade Zone and a Sub-zone at Portland and Machiasport, Maine, respectively. Occidental proposed the construction of a refinery at Machiasport conditioned upon having the application approved and receiving licenses from the Department of the Interior to import 300,000 b/d of foreign crude oil into the sub-zone and 100,000 b/d of finished products into the United States. Sinclair

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[22] Sinclair Oil Corp. v. Smith, 292 F. Supp. 1111 (S.D. N.Y. 1968).

contended that the Foreign Trade Zone Board had no jurisdiction to consider the application because it involved the grant of import licenses by Interior. Furthermore to the extent that it related to the sub-zone the Foreign Trade Zone application was claimed to have no definitional or legal basis and therefore the Board was without jurisdiction under the Foreign Trade Zone Act to entertain or consider the application. Sinclair pointed out that the Foreign Trade Zone Act did not even mention, much less authorize, Sub-zones. Moreover the proposed zone would be 10,000 times smaller than the proposed Sub-zone, would involve an initial investment of 1400 times less than the Sub-zone, would be 260 miles away from the Sub-zone, and would serve no function in common with the Sub-zone. In addition Sinclair asserted that the application did not state certain information required by the Act relating to the details on financing and acquiring title to the land to be used for the Zones. Because there was inadequate time to prepare for testimony prior to hearings before the Foreign Trade Zone Board, and because the Board Examiner permitted witnesses in support of the application but not witnesses opposed to testify regarding the Mandatory Oil Import Program and its economic consequences, the plaintiff alleged a violation of the Fifth Amendment to the Constitution. Since Occidental would get one hundred percent of its refinery inputs amounting to forty times more than it would be entitled if it were eligible under the program and would also get 30,000 b/d of finished products more than was available to all other importers in Districts I - IV, Sinclair claimed that the Secretary of the Interior lacked jurisdiction to consider the proposal

because the Mandatory Oil Import Program should be administered on the basis of a "fair and equitable" distribution. The Court feeling that the case was premature stated, ". . . no rights of the plaintiff, constitutional or statutory, have as yet been affected and no case or controversy is presented." It denied the motion for a preliminary injunction and dismissed the case for lack of jurisdiction.

Oklahoma v. Smith[23] was an action for a declaratory judgment and an injunction to declare illegal and enjoin further proceedings on the application for a Foreign Trade Zone at Machiasport, Maine. Suit was brought by the State of Oklahoma against the Secretaries of the Army, Commerce, and the Treasury as members of the Foreign Trade Zones Board, the Acting Executive Secretary of the Board, the Secretary of the Interior and the Oil Import Administrator to block action on the application. The theory of the case was that the defendants lacked jurisdiction, and, that their threatened actions exceeded their authority and were unauthorized and contrary to the Constitution and laws of the United States. The application filed by the Maine Port Authority would have allowed the Occidental Petroleum Corporation to construct and operate an oil refinery plant in a Foreign Trade Sub-zone at Machiasport. To that end Occidental sought an oil import quota to import into the Sub-zone 300,000 b/d of crude oil and a license to import into the customs territory of the United States 100,000 b/d of finished products. Oklahoma claimed that it would be injured by the granting of the application and import quotas because Occidental

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[23] Oklahoma v. Smith, Civil No. 68 -473 (W.D. Okl. 1968).

would be allowed to import half again as much crude oil as was then imported with resulting detriment and severe commercial injury to the Oil Companies active in Oklahoma. These companies would be forced to entrench their exploration and production activities and also be forced to seek similar treatment according to Oklahoma. This would cause an adverse impact on Oklahoma's revenues and economic well being. The Court held that the Foreign Trade Zones Board had jurisdiction to consider the application, but since there was no final administrative decision, dismissed the action as premature.

Some Recent Cases and a Filing

Murphy Oil Corp. v. Hickel[24] involved an action for a declaratory judgment and a mandatory injunction to interpret certain Oil Import Regulations and to require the Secretary of the Interior to increase the crude and unfinished oil import allocations granted to the plaintiff, which were alleged to be miscalculated because of an interpretive error. The Oil Import Appeals Board, contrary to Murphy's petition would not allow Murphy's allocation to be computed distinctly and dissimilarly for each of its two refineries. The Board stated, ". . . Although the Regulations apparently contain no explicit prohibition against dual basis, historical and input, calculation of a refiner's allocation, it is certain that such procedure has never been followed and would be contrary to the intent of the Regulations . . ." In its complaint Murphy alleged that its allocation for its Louisiana refinery should be calculated on a percentage basis of refinery inputs and that its allocation

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[24] Murphy Oil Corp. v. Hickel, 307 F. Supp 812 (W.D. Ark. 1969).

for its Wisconsin refinery should be calculated on a basis of 37.75 percent of the refinery's last allocation of imports of crude oil under the Voluntary Oil Import Program. Murphy contended that the application of the Presidential Proclamation and the Regulations only to those Northern Tier refiners whose allocations were figured on a historical basis would be arbitrary, confiscatory, and discriminatory, and contrary to statement of intent that such regulatory provision was intended to prevent dislocation of required feedstocks and deny Murphy equal protection under the laws in violation of the Fifth Amendment to the Constitution. The Court held that the Oil Import Appeals Board was wrong when it denied Murphy's petition and that the Secretary of the Interior made an interpretive error in the manner in which Murphy's allocation was computed. The Court, therefore, enjoined the Secretary to compute Murphy's crude oil allocation for its Meraux, Louisiana, refinery on a percentage input basis and for its Superior, Wisconsin, refinery on the basis of 37.75 percent of the Superior refinery's last allocation of the imports of crude oil under the Voluntary Oil Import Program. In Murphy Oil Corp. v. Hickel[25], The United States Court of Appeals for the eighth circuit reversed the District Court in the previous case deciding that the administrator's ruling was "on a rational basis and valid," and that the District Court's findings were "clearly erroneous as without adequate support and induced by an erroneous view of the law."

In Gulf Oil Corp. v. Udall[26] there was an action for a

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[25] Murphy Oil Corp. v. Hickel, 439 F. 2d 417 (8th Cir. 1971).

[26] Gulf Oil Corp. v. Udall, Civil No. 127 - 69 (D.D.C. 1969).

declaratory judgment, an injunction, and other equitable relief. That action was commenced by the plaintiffs Gulf Oil Corporation and Caribbean Gulf Refining Corporation against the Secretary of the Interior, the Oil Import Administrator, and the three members of the Oil Import Appeals Board after the Board's denial of Gulf's petition. Gulf requested the Court to determine null and void, the action of the defendants in denying it a portion of its Puerto Rican import allocation. A Court declaration that plaintiffs were entitled to an import license for Puerto Rico on the basis of their local Puerto Rican demand and their demand for shipments of finished petroleum products from Puerto Rico to Districts I - IV was also sought. Gulf explained to the Court that it had applied for a Puerto Rican allocation but that the Oil Import Administration awarded an allocation which was 3,539 b/d less than the quantity applied for. Thereupon Gulf filed an appeal with the Oil Import Appeals Board requesting the amounts denied on the grounds of error and exceptional hardship. Gulf maintained that the shipments from another company's refinery in Puerto Rico for Gulf and other shipments under exchange agreements into District I - IV should have been used in determining the true base for Gulf's allocation. Gulf claimed that the Board erroneously concluded that the Presidential Proclamation provided for the import allocation to be made to the one who physically refines the products, rather than the one for whom the product is refined or who ships the product from Puerto Rico into Districts I - IV. Gulf alleged that the denial of the increased allocation would impose a significant economic hardship on it and

require substantial adjustments in its operation which would also result in an estimated loss of profits of about two and one-half million dollars for the allocation period in question and similar or greater losses in profits for future allocation periods. The Court held that there was no genuine issue of any material fact and granted the defendants motion for summary judgment.

In Gaskin v Hickel[27] plaintiff provided marketing and distribution services under a common brand name, "Tiara", for independent domestic refiners in competition with integrated suppliers who dominated the market. Plaintiff sold jet fuel on a nationwide basis to domestic and international airlines. The defendant was the Secretary of the Interior and those of his staff who administered the Mandatory Oil Import Program. Plaintiff contended that it had been unable to procure fuel from domestic sources at "economically feasible market prices" since 1967. The Appeals Board rejected plaintiff's petitions based on exceptional hardship in each year for five years following 1966. In its 1970 decision, the Board said that it had no opportunity to grant relief because plaintiff had not been in business since 1967. Plaintiff appealed to the Court, to find the Board's action arbitrary and capricious and to direct an allocation of 4,000 b/d of kerosene jet fuel into Districts I - IV and 1,500 b/d into District V during 1970. The Court held for defendants and granted them judgment as a matter of law.

In Industrial Solvents Corp. v. Morton[28] plaintiff complained

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[27] Gaskin v. Hickel, Civil No. 2181 - 70 (D.D.C. 1970).

[28] Industrial Solvents Corp. v. Morton, Civil No. 63 - 72 (D.D.C. 1972).

that under the Presidential Proclamation establishing the Mandatory Oil Import Program only "butylenes . . . produced in the refining of petroleum" were included while butylenes produced in foreign petro-chemical plants were not covered and no license was needed to import them. Neither were such butylenes covered by Oil Import Regulation Number one. In fact the language of that regulation was specifically construed by the Oil Import Appeals Board as not encompassing butylenes produced in a petro-chemical plant from petro-chemical feedstocks. On October 29, 1970, the acting Secretary of the Interior issued an Amendment to Oil Import Regulation Number One which had the effect of including all butylenes in the Oil Import Program, and meant that butylenes could not be imported without a license issued pursuant to an allocation. Judge Hart found that "the stream of hydro-carbons (normal butylene mixture) which plaintiff was importing into the United States did not come within the definition of Section 9(g)(1) of Presidential Proclamation 3279, as amended, in that it is not produced in the refining of petroleum.

New England Governors' Conference v. Morton[29] presented an action for a declaratory judgment and an injunction. Plaintiffs were the Governors of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, Consumers Union of United States, Inc., and Public Citizens, Inc.. The defendants were the Secretary of the Interior, the Director of the Office of Oil and Gas, and the Director

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[29] New England Governors' Conference v. Morton, Civil No. 13 - 59 (S.D. Me. 1972).

of the Office of Emergency Preparedness. The Governors of Louisiana, Oklahoma, Texas, and Wyoming, as well as several independent producers intervened in behalf of the defendants. The complaint consisting of essentially five causes of action challenged the validity of the Mandatory Oil Import Program as it is presently administered. As a first cause of action, the plaintiffs maintained that the Mandatory Oil Import Program is not authorized by Section 232 of the Trade Expansion Act because neither the 1959 findings of the Director of Civil and Defense Mobilization nor Presidential Proclamation 3279 nor any other studies analyzed the threat to national security as required by the statute before imposing a quota. It is claimed that the Program operates primarily to protect the American Oil Industry from competition from imports which are considerably cheaper rather than protecting the national security. Plaintiffs state that no finding has been made since 1959 that imports continue to threaten national security although significant changes have occurred concerning factors then considered, and no finding was made that oil imports from Canada threatened to impair the national security when a quota was imposed on overland imports from Canada in 1970.

As a second cause of action, plaintiffs assert that the program imposes import restrictions which are not uniform throughout the United States and gives a preference to imports in District V over those in Districts I - IV in violation of Article One of the Constitution of the United States. For a third cause of action the plaintiffs contend that the Proclamation and Regulations violate the due process clause of the Fifth Amendment by discriminating arbitrarily without a rational

basis. Plaintiffs' fourth cause of action alleges that the Proclamation and Regulations violate Section 232 of the Trade Expansion Act because the Act did not authorize different controls for different areas of the Country. As a fifth and final cause of action, plaintiffs maintain that the Import Program as implemented violates the Proclamation because the Director of Emergency Preparedness failed to determine whether price increases are necessary to accomplish the national security objectives of the statute. The prayer of the complaint asks that the Oil Import Program or its implementation be judged in violation of the Constitution and requested that the defendants be enjoined from continuing to impose quotas until a program fully consistent with the Constitution, the Trade Expansion Act, the Proclamation and the Regulations is adopted, until the Director of the office of Emergency Preparedness makes current findings based on a thorough investigation and analysis of all relevant factors which show that oil imports are threatening to impair national security and that import quotas at a specified level are necessary to protect national security, until the President issues a Proclamation based on the findings of the Director of the Office of Emergency Preparedness, establishing a program reasonably designed to protect national security, and until the Director of the Office of Emergency Preparedness makes a determination as to whether each oil price increase since 1959 was necessary to accomplish the National Security objectives of Section 232. Even if the present Oil Import Program is found in other respects to be valid, plaintiffs pray that the defendants be enjoined from operating or enforcing different quota systems on different areas of

the Country or imposing quotas on oil imports from Canada without a finding that Canadian imports threaten to impair national security. Plaintiffs also pray that the Court order the Director of the Office of Emergency Preparedness to make current findings as to whether quotas are needed to protect national security and whether the current program in fact protects national security, whether quotas on Canadian oil are required to protect national security, and whether the present restrictions on Canadian oil in fact reasonably protect the national security, and that he determine whether past oil price increases were necessary to accomplish the national security objectives of Section 232 and to make similar determinations into all future oil price increases. At present the Justice Department representing the defendants has taken issue with the basic premises used to attack the program. In a brief opposing the consumer group's motion for summary judgment, the Government asked dismissal of the case..

CHAPTER IX

CONCLUSIONS

From Objective Simplicity to Subjective Complexity

With the passage of time, first the Voluntary and then the Mandatory Oil Import Programs became more and more complex. Simultaneously the allocation system became more and more subjective. Restrictions multiplied from restrictions, and special deals proliferated. Controls on imports of crude oil inevitably resulted in controls on imports of unfinished oils and finished products because of substitution and fungibility. Since finished products were not the same, separate programs were instituted for various products. Residual fuel oil, number 2 fuel oil, low sulphur fuel oil, and asphalt are typical examples.

Preferences were granted to Canadian and Mexican imports on the theory that they were no less secure than domestic production. Special treatment was afforded to imports from Puerto Rico and the Virgin Islands, which allowed refined products to be marketed in the United States as an exception to the restrictions of the Mandatory Program. The reason for the special treatment was to create job opportunities and employment in both areas.

In advocating the separation of Districts I -- IV from District V, it was urged that Districts I -- IV had substantial

productive capacity in excess of actual production, that production was increasing, and that the volume of production was controlled by certain state regulatory commissions for conservation purposes, while District V had no excess capacity, declining production, and was not controlled by regulatory bodies. Moreover it was said that transportation was not available between Districts I -- IV and District V, and imports were necessary to meet the demand in District V. Because of these differences, separate programs were established for both areas.

Because of political pressure imports of residual fuel oil were effectively decontrolled in District I and controls on Number 2 heating oil to New England markets were relaxed.

Utilization for Non-Design Purposes

Other factors helped to complicate and entangle the situation even more. One such factor was the use of the Mandatory Oil Import Program for non-design, non-security purposes.

The basis of the Mandatory Oil Import Program, like that of the Voluntary Oil Import Program which it succeeded, is the certified requirements of national security. The controlling statute authorizes government intervention in support of domestic production and price only for the extra-ordinary and compelling purpose of protecting national security. Theoretically then, the United States should have had no interest in oil imports if they were not related to the national security objective. Yet this was clearly not the case. The government succumbed to the lure of using the value differential

between the domestic and world price inherent in the program in support of objectives totally unconnected to national security. Subsidizing small businessmen through the introduction of the sliding scale, decreasing the unemployment rate in Puerto Rico and the Virgin Islands by granting allocations of finished products to individual companies to subsidize refinery construction, protecting the environment by executing quota agreements with three companies for installation of desulphurization facilities and granting bonus allocations for importation and manufacture of low sulphur fuel oil were examples.

A Word on Beneficiaries

If the goal of the Mandatory Oil Import Program was to create an atmosphere conducive to exploration and development of additional domestic reserves and thereby enhance national security, some indication of the success or failure of the program could be obtained by comparing domestic exploratory and drilling activity before and after the outset of the program. Significantly increased activity in these areas should reasonably lead to the conclusion that security was enhanced. Unfortunately, the evidence tends to demonstrate that both exploratory and drilling activity declined substantially. This is not to say that the program was a complete and utter failure, however, as it may well have prevented an even more severe decline.

The question then became, why did exploration and drilling decline? Some of the majors contended oil became more difficult and more expensive to locate than in previous years. They felt it was considerably easier to purchase domestic production rather than drill

for it. The independents pointed out that their profits from production must offer them adequate incentive for further search. The solution, say some independent oil men, is to tie import quotas directly to wildcat drilling. This, it is ascerted, would provide the needed financial incentive and increase exploration and drilling.

This raises two additional inquiries: Who were the beneficiaries of the Mandatory Oil Import Program? Why were they the beneficiaries? Under the Mandatory Oil Import Program, the refiners were the ones who benefited. The reason was one of administrative expediency.. It was easier to deal with a few refiners rather than many wildcat drillers and independent producers. In theory the benefits involved are supposed to trickle down to the wildcat level. Whether this actually happened in practice was questionable.

CHAPTER X

RECOMMENDATIONS

Because the Mandatory Oil Import Program became unnecessarily intricate and unduly complex, simplification and disentanglement were urgently called for, ridding it of excessive exceptions, exemptions, and distinctions. The accelerating succession of changes, amendments, and modifications needed to be decelarated and stabilized, at least sufficiently to allow investment with a reasonable assurance of what the rules were going to be the following week.

Despite mumblings of contrary intentions by top policy officials, near the end of the Mandatory Oil Import Program the country was nearing full use of its refinery facilities and was presented with the prospect of added product imports. Why this condition existed was blatantly obvious. Residual fuel oil could be imported without restraint into District I while crude oil to make residual fuel oil could not. Imports of asphalt into Districts I -- IV remained uncurbed while imports of crude oil to make asphalt were strictly controlled. Refined products and natural gas liquids could be imported from Canada into Districts I -- IV without limitation, but crude oil was subject to quota restrictions. Imports of ethane, propane, and butane from Western Hemisphere sources entered the country freely. Refined products coming from Puerto Rico were

subject to certain limitations; however, these were temporarily removed. The products quota of 15,000 b/d granted in a special deal to the only refiner in the Virgin Islands was being increased as much as 50,000 b/d during the fuel oil shortage of the winter of 1972-1973. It seemed that a more reasonable policy would allow American refiners to import crude quota free, rather than products.

Since petroleum supplied from Canada and Mexico appeared almost as uninterruptable politically and militarily, at least until recently, oil produced in and exported from those countries in excess of their domestic demands should be exempted from the restrictions of the Mandatory Oil Import Program. This is not to say that the United States should continue to subsidize Canada by purchasing as much Canadian-produced oil as Canada imports from offshore. Before this could be accomplished, however, some tight international agreements with those countries need to be negotiated. It might also be advisable to work in the direction of a continental energy accord.

Following an appropriate transition period, District lines within the United States needed erasure and all districts needed to be treated in the same manner. Despite what may have been the situation in years gone by, there is no currently valid reason for having different rules and exemptions applicable in different parts of the same country.

It was absolutely ridiculous to continue to maintain that oil import quotas for Districts I - IV were based on 12.2 percent of estimated production within Districts I -- IV when in fact that figure should have been at least doubled, and when in fact the nation-wide import ratio was 34.5 percent in 1971 and has since risen. The increase

was due to additional quotas which were established to fill the anticipated gap between supply and demand as has historically been done in District V. It ought to have been openly admitted that this was what was being done rather than tenaciously officially clinging to the ever-sinking 12.2 percent relationship.

The Mandatory Oil Import Program should have been shielded by more explicit legislation from direct political pressure which all too often resulted in partiality and favoritism. It should also have been made less subjective, doing away with ad hoc treatment of individual concerns.

The Mandatory Oil Import Program should have been unencumbered by objectives not directly related to national security. Special privileges, not connected to national security, should be gradually eliminated. There is no design purpose for perpetuating aid to inefficient small businessmen under the sliding scale system, for continuing poverty alleviating economic development programs in Puerto Rico and the Virgin Islands by subsidizing refinery construction, and for persisting in helping the environmentalists through the medium of the desulphurization program. It is, therefore, suggested that these and similar ends, no matter how meritorious in their own right, should have been excluded from coverage of the Mandatory Oil Import Program and handled separately.

Instead of channeling all of the value inherent in oil import tickets to the refining sector of the oil industry which does not explore for or discover new sources of domestic oil, and instead of

hoping in an unsophisticated way that some of the value would trickle down to the exploration sector, affirmative action ought to have been taken to ensure that some portion of the benefits flowed to the exploration sector in general, and the wildcat drillers in particular, in relation to the amount of domestic oil they discovered. Another portion of the benefits should have been used to support additional exploration and development of domestic spare producing capacity such as the Naval Petroleum Reserves. Still another portion of that value should have been used to advance new energy technologies such as the nascent synthetic fuels industry. Or better yet, why not auction import tickets to the highest bidder. This would be a much preferable way of allocating the tickets from the standpoint of economic efficiency, and also from the standpoint of capturing the economic value of the tickets for the United States Treasury for the good of the population in general.

A few other eclectic thoughts and ideas, not easily categorized, concurring the Oil Import problem confronting the country, ought to be expressed before terminating this paper.

We, as a nation, need to:

1.) Stimulate exploration for and development of the potential oil reserves of 450 billion barrels, 80 times our 1971 consumption; potential gas reserves of 2100 trillion cubic feet, 100 times our 1971 consumption, and potential coal reserves of 390 billion short tons or 800 times our 1971 consumption, which the United States Geological Survey thinks we have.

2.) Study renewable sources of energy such as geo-thermal, solar, tidal, wind, power, etc.,

3.) Perfect new technologies like coal gasification and liquefication, oil shale, the nuclear breeder reactor and nuclear fusion.

4.) Substitute more available fuels for scarce fuels.

5.) Discontinue exports of vital energy resources this country currently possesses.

6.) Diversify foreign sources of supply to the greatest extent possible.

7.) Institute conservation measures; for example: improved insulation of our homes, adoption of more efficient heating and air conditioning systems, shift of intercity freight from highway to rail, intercity passenger travel from air to ground, and urban passengers from automobile to mass transit.

8.) Discourage energy companies from attempting to expand their markets through additional advertising.

9.) Tax wanton use of energy.

10.) Plan for the eventuality of energy controls and rationing.

11.) Weigh more heavily, United States interests as an oil importing nation in formulating international policy.

12.) Control imports of natural gas, gas substitutes, and their feedstocks under the same program by the same people and pursuant to the same rules as crude oil, unfinished oils, and refined products.

Some of these points were addressed in President Nixon's Energy Message and Proclamation 4210 of April 18, 1973. Many others were not and remain in urgent need of attention.

APPENDIX A

Imports of Petroleum and Petroleum Products

Proclamation 4210. April 18, 1973

MODIFYING PROCLAMATION 3279, RELATING TO IMPORTS OF PETROLEUM AND PETROLEUM PRODUCTS, PROVIDING FOR THE LONG-TERM CONTROL OF IMPORTS OF PETROLEUM AND PETROLEUM PRODUCTS THROUGH A SYSTEM OF LICENSE FEES AND PROVIDING FOR GRADUAL REDUCTION OF LEVELS OF IMPORTS OF CRUDE OIL, UNFINISHED OILS AND FINISHED PRODUCTS

By the President of the United States of America
a Proclamation

The Chairman of the Oil Policy Committee maintains a constant surveillance of imports of petroleum and its primary derivatives in respect to the national security.

He informs me that, in the course of his surveillance, he has reviewed the status of imports under Proclamation 3279, as amended, of petroleum and its primary derivatives in their relation to the national security and that further Presidential action under section 232 of the Trade Expansion Act of 1962, as amended, is required.

He recommends, after consultation with the Oil Policy Committee, that the method of adjusting imports of petroleum and petroleum products be modified by immediately suspending tariffs on imports of petroleum and petroleum products and by shifting to a system whereby fees for licenses covering such imports shall be charged and whereby such fees may be adjusted from time to time, as required in order to discourage the importation into the United States of petroleum and petroleum products in such quantities or under such circumstances as to threaten to impair the national security; to create conditions favorable, in the long range, to domestic production needed for projected national security requirements; to increase the capacity of domestic refineries and petro-chemical plants to meet such requirements; and to encourage investment, exploration, and development necessary to assure such growth.

The Chairman informs me further, that the levels of imports heretofore fixed in calendar year 1973, with respect to Districts I–IV, District V, and Puerto Rico, reflect application of the established policy that for each such area the maximum level of imports shall be the difference between estimated supply and estimated demand, and that he finds that such levels of imports should be continued to be permitted without payment of the fees otherwise provided for in this proclamation.

I agree with the recommendations of the Chairman, and I deem it necessary and consistent with the national security objectives of the Trade Expansion Act of 1962, as amended, that provision be made for a gradual transition from the existing quota method of adjusting imports of petroleum and petroleum products to a long-term program for adjustment of imports of petroleum and petroleum products through the suspension of existing tariffs and the institution of a system of fees applicable to imports of crude oil, unfinished oils, and finished products, which fees may be adjusted from time to time.

Now, Therefore, I, Richard Nixon, President of the United States of America, acting under and by virtue of the authority vested in me by the Constitution and laws of the United States, including section 232 of the Trade Expansion Act of 1962, do hereby proclaim that, effective as of this date, that portion of Proclamation 3279, as amended, beginning with section 1 thereof, is hereby amended to read as follows:

"Sec. 1(a) In Districts I–IV, in District V, and in Puerto Rico, no crude oil, unfinished oils, or finished products may be entered for consumption or withdrawn from warehouse for consumption, except (1) by or for the account of a person to whom a license has been issued by the Secretary of the Interior pursuant to an allocation made to such person by the Secretary in accordance with regulations issued by the Secretary, and such entries or withdrawals may be made only in accordance with the terms of such license, or (2) as authorized by the Secretary pursuant to paragraph (b) of this section, or (3) as to finished products, by or for the account of a department, establishment, or agency of the United States, which shall not be required to have such a license but which shall be subject to the provisions of paragraph (c) of this section, or (4) as provided in paragraph (c) of this section, or (5) as otherwise provided in this proclamation.

(b) The Secretary of the Interior may, in his discretion, authorize entries, without allocation or license, of small quantities of crude oil, unfinished oils, or finished products.

(c) In Districts I–IV, District V, and in Puerto Rico, no department, establishment, or agency of the United States shall without prior payment of the fees provided for in this proclamation, import finished products in excess of the respective allocations made to them by the Secretary of the Interior. Such allocations shall, except as otherwise provided in this proclamation, be within the maximum levels of imports established in section 2 of this proclamation.

(d) The Secretary may, by regulation, provide that no allocation or license shall be required in connection with

the transportation to the United States by pipeline through a foreign country of crude oil, unfinished oils, or finished products produced in the customs territory of the United States or, in the event of commingling with foreign oils of like kind and qualities incidental to such transportation, of quantities equivalent to the quantities produced in and shipped from such customs territory."

"SEC. 2(a) Except as otherwise provided in this proclamation, the maximum level of imports, from sources other than Canada and Mexico which may be made without prior payment of the fees provided in this proclamation, of crude oil, unfinished oils, and finished products (other than residual fuel oil to be used as fuel) shall be:

(1) for Districts I–IV, 1,992,000 average barrels per day per calendar year: *Provided*, That, in addition to the foregoing, there may be imported into District I an average of 50,000 barrels per day of No. 2 fuel oil, manufactured in the Western Hemisphere from crude oil produced in the Western Hemisphere under allocations made by the Secretary, pursuant to regulations of the Secretary, to deepwater terminal operators currently receiving allocations and who do not have crude oil import allocations into Districts I–IV; *Provided Further,* That, whenever the Chairman of the Oil Policy Committee finds that, because of supply, price, or other considerations, the requirement that No. 2 fuel oil be manufactured in the Western Hemisphere from crude oil produced in the Western Hemisphere is unduly restricting the availability of such oil for importation into District I and is not required for the national security, he shall so advise the Secretary who shall then suspend such requirement by appropriate regulation. No such suspension shall be renewed except upon a new finding by the Chairman as required by the preceding sentence; *Provided Further,* That, the Secretary may, by regulation, provide that a holder of an allocation for the importation of No. 2 fuel oil may import crude oil produced in the Western Hemisphere in lieu of No. 2 fuel oil, barrel for barrel, and exchange such crude oil for No. 2 fuel oil.

(2) for District V, 670,000 average barrels per day per calendar year.

(3) for Puerto Rico 227,221 average barrels per day per year commencing April 1, 1973; *Provided,* That no person who manufactures in Puerto Rico No. 2 fuel oil from crude oil produced in the Western Hemisphere shall incur a reduction of an allocation or be deemed to have violated a condition of an allocation by reason of a shipment of such oil to a person who holds an allocation of imports of No. 2 fuel oil into District I and who does not have a crude oil import allocation into District I; *Pro-*

vided Further, That, this limitation shall not apply to long-term allocations of imports into Puerto Rico.

(4) for District I, 2,900,000 average barrels per day per year, commencing April 1, 1973, of residual fuel oil to be used as fuel.

(5) for Districts II–IV, 42,000 average barrels per day per calendar year of residual fuel oil to be used as fuel.

(6) for District V, 75,600 average barrels per day per calendar year of residual fuel oil to be used as fuel.

(b) Imports of asphalt, ethane, propane, and butanes shall not be subject to the levels established in this proclamation nor shall any allocation or license be required for their importation.

(c) Crude oil may be imported into District I to be topped for use as burner fuel under such conditions as the Secretary may, by regulation, provide. The quantities of crude oil, unfinished oils, and finished products that may be imported into the United States under the provisions of this proclamation shall not be reduced by reason of imports of crude oil used as fuel under this paragraph.

(d) (1) Except as otherwise provided in this proclamation, the maximum levels of imports from Canada of crude oil and unfinished oils to which license fees are not applicable shall be:

(i) for Districts I–IV, 960,000 average barrels per day per calendar year; *Provided,* That, the Secretary may, within the limits established by subparagraph (1) of paragraph (a) of this section, increase the quantity of crude oil, unfinished oils, and finished products which may be imported from Canada so long as such increase is consonant with the purposes of this proclamation.

(ii) for District V, 280,000 average barrels per day per calendar year; *Provided,* That, the Secretary may, within the limits established by subparagraph (1) of paragraph (a) of this section, increase the quantity of crude oil, unfinished oils, and finished products which may be imported from Canada so long as such increase is consonant with the purposes of this proclamation.

(2) Entries for consumption of imports from Canada by pipeline may be made until midnight January 15 of the calendar year following the calendar year in which any license authorizing such imports from Canada was issued.

(e) Except as otherwise provided in this proclamation, the maximum level of imports from Mexico of crude oil produced in Mexico and unfinished oils and finished products produced in Mexico wholly from Mexican crude oil shall be 32,500 average barrels per day per calendar year.

(f) The levels established, and the total demand referred to, in this section do not include free withdrawals by persons pursuant to section 309 of the Tariff Act of 1930, as amended (19 U.S.C. 1309), or petroleum supplies for vessels or aircraft operated by the United States between points referred to in said section 309 (as to vessels or aircraft, respectively) or between any point in the United States or its possessions and any point in a foreign country."

"SEC. 3(a) Effective May 1, 1973, the Secretary shall, by regulation, establish a system of fees for licenses issued under allocations of imports of crude oil, unfinished oils, and finished products, over the above levels of imports established by section 2 of this proclamation. Such regulations shall require, among other appropriate provisions, that such fees shall be:

FEE SCHEDULE

[Cents per barrel]

	May 1, 1973	Nov. 1, 1973	May 1, 1974	Nov. 1, 1974	May 1, 1975	Nov. 1, 1975
	10½	13	15½	18	21	21
gasoline	52	54½	57	59½	63	63
er finished products and unfinished oils (except ethane, propane and nes)	15	20	30	42	52	63

Provided, That, license fees paid for imports of crude oil or unfinished oils will be refunded to the extent that such crude oils or unfinished oils have been incorporated into petro-chemical or finished products subsequently exported or that asphalt as defined in this proclamation was produced from the imported feedstocks.

(b) Except for allocation and licenses to which the license fee is not applicable, applications for allocations of imports of crude oil, unfinished oils, or finished products shall be accompanied by the applicant's certified check or a cashier's check payable to the order of the Treasurer of the United States in the appropriate amount chargeable pursuant to this section. Applications not accompanied by a certified or cashier's check in the amount required shall not be considered.

(c)(1) All monies received by the Secretary under the terms of paragraph (b) of this section shall be held by the Secretary of the Interior in a suspense account and may be drawn upon by the Secretary for the payment of any refunds of refundable license fees and for payments to Puerto Rico of sums collected by way of license fees for imports into Puerto Rico. Balances remaining in such suspense account not required for payment hereinabove provided shall be deposited at the end of each fiscal year in the Treasury of the United States and credited to

miscellaneous receipts.

(2) Refunds pursuant to subparagraph (1) of paragraph (c) of this section shall be made without interest."

"SEC. 4(a) The Secretary of the Interior is hereby authorized to issue regulations for the purpose of implementing this proclamation.

(b)(1) With respect to the allocation of imports of crude oil and unfinished oils into Districts I–IV and into District V, such regulations shall provide for a fair and equitable distribution of allocations of imports for which license fees are not applicable among eligible persons having refinery capacity in relation to refinery inputs or in relation to storage capacities of such allocation holders. The Secretary may, by regulation, also provide for the making of allocations of imports for which license fees are not applicable, of crude oil and unfinished oils into Districts I–IV and into District V to persons having petrochemical plants in these districts in relation to the outputs of such plants or in relation to inputs to such plants. Provision may be made in the regulations for the making of such allocations on the basis of graduated scales. Notwithstanding the levels prescribed in section 2 of this proclamation, the Secretary may also by regulation make such provisions as he deems consonant with the objectives of this proclamation for the making of allocations of imports of crude oil and unfinished oils to which the license fee is not applicable into Districts I–IV and into District V to persons who manufacture from crude oil and unfinished oils and who export finished products and petrochemicals, subject to such designations as the Secretary may make. Notwithstanding the levels established in section 2 of this proclamation the Secretary may make allocations to which license fees shall not be applicable to new, expanded, or reactivated refinery capacity and petrochemical plants for a period of five years from the date such facility comes on stream. Such allocations shall not exceed 75 percent of estimated refinery inputs or the percentage of petrochemical plant inputs applicable.

(2) Such regulations shall provide for the allocations of imports with respect to which license fees are not applicable of crude oil and unfinished oils into Puerto Rico among persons having refinery capacity in Puerto Rico in the calendar year 1964 on the basis of the allocation of crude and unfinished oils received by such persons for the allocation period commencing April 1, 1973; *Provided*, That, in respect of imports for which license fees are applicable, license fees paid for imports of crude oil and unfinished oils into Puerto Rico will be refunded to the extent that such crude oil or unfinished oils have been incorporated into finished products consumed in Puerto

Rico or petrochemicals or finished products exported therefrom.

(3) Except for crude oil or unfinished oils imported under license or licenses for which a fee has been charged, or pursuant to specific relief granted pursuant to section 5, such regulations shall require that imported crude oil and unfinished oils be processed in the licensee's refinery or petrochemical plant, except that exchanges for domestic crude or unfinished oils may be made, if otherwise lawful, if effected on a current basis and reported in advance to the Secretary, and if the domestic crude or unfinished oils are processed in the licensee's refinery or petrochemical plant.

(4) With respect to the allocation of imports of finished products (other than residual fuel oil to be used as fuel) in respect of which license fees are not applicable into Puerto Rico, such regulations shall provide, to the extent possible for a fair and equitable distribution of imports of such finished products among persons who were importers of such finished products into Puerto Rico during all or part of the calendar year 1958, or such higher level as the Secretary may have determined to be required to meet demand in Puerto Rico for finished products that would not otherwise have been met, during the calendar year 1973.

(5) With respect to the allocation of imports to which license fees are not applicable of residual fuel oil to be used as fuel in Puerto Rico, such regulations shall, to the extent possible, provide for a fair and equitable distribution of imports of residual fuel oil to be used as fuel among persons who were importers of that product into Puerto Rico during all or part of the calendar year 1958. In addition, the Secretary by regulation may, to the extent possible, provide for a fair and equitable distribution of imports of residual fuel oil to be used as fuel, the maximum sulphur content of which is acceptable to the Secretary (i) among persons who are in the business in the respective districts or Puerto Rico of selling residual fuel oil to be used as fuel and who had inputs of that product to deepwater terminals located in the respective districts or Puerto Rico and (ii) among persons who are in the business in the respective districts or Puerto Rico of selling residual fuel oil to be used as fuel and who have throughput agreements (warehouse agreements) with deepwater terminal operators. With respect to the allocation of imports into District I of residual fuel oil to be used as fuel, such regulations shall, to the extent possible, provide for a fair and equitable distribution of imports of residual fuel oil to be used as fuel (i) among persons who are in the business in District I of selling residual fuel

oil to be used as fuel and who have had inputs of that product to deepwater terminals located in District I, and (ii) among persons who are in the business in District I of selling residual fuel oil to be used as fuel and have throughput agreements (warehouse agreements) with deepwater terminal operators. With respect to the allocation of imports of residual fuel oil to be used as fuel into District I, Districts II–IV, District V, and Puerto Rico, such regulations shall also provide, to the extent possible, for the granting of allocations of imports of residual fuel oil to be used as fuel in accordance with procedures established pursuant to section 5 of this proclamation.

(c) Such regulations may provide for the revocation or suspension by the Secretary of any allocation or license on grounds relating to the national security, or the violation of the terms of this proclamation, or of any regulation, allocation, or license issued pursuant to this proclamation.

(d) For the balance of the calendar year 1973, notwithstanding the levels established in section 2 of this proclamation and the provisions of paragraph (b) of this section, the Secretary may provide by regulation for additional allocations of imports in respect of which license fees are not applicable of crude oil and unfinished oils to persons in District I–IV, and District V who manufacture in the United States residual fuel oil to be used as fuel, the maximum sulphur content of which is acceptable to the Secretary, in consultation with the Secretary of Health, Education and Welfare. These allocations to each of such persons shall not exceed the amount of such residual fuel oil manufactured by that person."

"Sec. 5(a) The Secretary of the Interior is authorized to provide for the establishment and operation of an Appeals Board to consider petitions by persons affected by the regulations issued pursuant to this proclamation. The Appeals Board shall be comprised of a representative each from the Departments of the Interior, Justice, and Commerce to be designated respectively by the heads of such Departments.

(b) The Appeals Board may be empowered, subject to the general direction of the Chairman of the Oil Policy Committee, (1) within the limits of the maximum levels of imports established in this proclamation, to modify on the grounds of error any allocation made to any person under such regulations; (2) without regard to the limits of the maximum levels of imports established in this proclamation, (i) to modify, on the grounds of exceptional hardship, any allocation with respect to which license fees are not applicable made to any person under such regu-

lations; (ii) to grant allocations of imports to which license fees will not be applicable of crude oil and unfinished oils in special circumstances to persons with importing histories who do not qualify for allocations under such regulations; and (iii) to grant allocations of imports, to which license fees shall not be applicable, of finished products on the grounds of exceptional hardship; and to assure that adequate supplies of crude oil, unfinished oils, and finished products are made available to independent refiners or established marketers who are experiencing exceptional hardship or in emergencies requiring, in its judgment, the grant of allocations to them, and (3) to review the revocation or suspension of any allocation or license. The Secretary may provide that the Board may take such action on petitions as it deems appropriate and that the decisions by the Appeals Board shall be final.

(c) Effective April 30, 1980, the jurisdiction of the Oil Import Appeals Board shall expire."

"SEC. 6 Persons who apply for allocations of crude oil, unfinished oils, or finished products, persons to whom such allocations have been made, and persons who hold such allocations shall furnish to the Secretary of the Interior such information and shall make such reports as he may require, by regulations or otherwise, in the discharge of his responsibilities under this proclamation."

"SEC. 7 The Chairman of the Oil Policy Committee shall provide policy direction, coordination, and surveillance of the oil import control program, including approval of regulations issued pursuant to this proclamation. He shall perform those functions after receiving the advice of the Oil Policy Committee and in accordance with guidance from the Assistant to the President with responsibility in the area of economic affairs."

"SEC. 8 The Oil Policy Committee shall consist of the Deputy Secretary of the Treasury, as Chairman, and the Secretaries of State, Defense, Interior, and Commerce, the Attorney General, and the Chairman of the Council of Economic Advisers, as members. The President may, from time to time, designate other officials to serve as members of the Committee. The Chairman may create subcommittees of the Committee to study and report to the Committee concerning specified subject matters."

"SEC. 9 The Oil Policy Committee shall consult with and advise the Chairman on oil import policy, including the operation of the control program under Proclamation 3279, as amended, and on recommendations for changes in the program by the issuance of new proclamations with respect to it, or otherwise."

"SEC. 10 The Chairman of the Oil Policy Committee shall from time to time, as in his judgment is required,

review the status of imports of petroleum and its primary derivatives in respect to the national security, and, after consultation with the Oil Policy Committee, he shall inform the President of any circumstances which, in the Chairman's opinion, might indicate the need for further Presidential action under section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862), as amended. In the event prices of crude oil or its products or derivatives should be increased after the effective date of this proclamation, beyond the limits contemplated by the Cost of Living Council, such review may include a determination as to whether such increase or increases are necessary to accomplish the national security objectives of section 232 of the Trade Expansion Act of 1962, as amended, and this proclamation."

"SEC. 11 Annually, beginning May 1, 1974, the maximum levels of imports subject to allocation and license, to which license fees shall not be applicable, shall be reduced as follows:

For the year commencing May 1, 1974, the maximum levels of such imports shall be ninety percent (90%), in barrels per day, of the levels established during the calendar year 1973;

For the year commencing May 1, 1975, the maximum levels of such imports shall be eighty percent (80%), in barrels per day, of the levels established during the calendar year 1973;

For the year commencing May 1, 1976, the maximum levels of such imports shall be sixty-five percent (65%), in barrels per day, of the levels established during the calendar year 1973;

For the year commencing May 1, 1977, the maximum levels of such imports shall be fifty percent (50%), in barrels per day, of the levels established during the calendar year 1973;

For the year commencing May 1, 1978, the maximum levels of such imports shall be thirty-five percent (35%), in barrels per day, of the levels established during the calendar year 1973;

For the year commencing May 1, 1979, the maximum levels of such imports shall be twenty percent (20%), in barrels per day, of the levels established during the calendar year 1973.

Effective April 30, 1980, the system of issuing allocations and licenses not subject to license fee shall be abolished;

Provided, That, with respect to any allocation period expiring prior to May 1, 1974, such allocation period shall be extended to April 30, 1974, and the Secretary shall issue appropriate regulations to issue additional oil import

licenses to reflect such extension.

"SEC. 12(a) Commitments and obligations contained in long-term allocations heretofore made of imports of crude oil into Puerto Rico shall be unimpaired by this proclamation or regulations issued thereunder.

(b) Commitments and obligations contained in that certain allocation made to Hess Oil and Chemical Corporation of imports of finished products into Districts I–IV, dated December 12, 1967, effective January 1, 1968, shall be unimpaired by this proclamation or regulations issued thereunder."

"SEC. 13 The Secretary of the Interior may delegate, and provide for successive redelegation of, the authority conferred upon him by this proclamation. All departments and agencies of the Executive Branch of the Government shall cooperate with and assist the Secretary of the Interior in carrying out the purposes of this proclamation."

"SEC. 14 Executive Order 10761 of March 27, 1958, entitled "Government Purchases of Crude Petroleum and Petroleum Products" (23 F.R. 2067) is revoked."

"SEC. 15 As used in this proclamation:

(a) "Person" includes an individual, a corporation, firm, or other business organization or legal entity, and an agency of a state, territorial or local government, but does not include a department, establishment, or agency of the United States.

(b) "District I" means the states of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, West Virginia, Virginia, North Carolina, South Carolina, Georgia, Florida, and the District of Columbia.

(c) "Districts II–IV" means all of the states of the United States except those states within District I and District V.

(d) "Districts I–IV" means the District of Columbia and all of the states of the United States except those states within District V.

(e) "District V" means the states of Arizona, Nevada, California, Oregon, Washington, Alaska, and Hawaii.

(f) "Crude oil" means a mixture of hydrocarbons that existed in natural underground reservoirs and which is liquid at atmospheric pressure after passing through surface separating processes and does not include natural gas products. It includes the initial liquid hydrocarbons produced from tar sands, gilsonite, and oil shale.

(g) "Finished products" means any one or more of the following petroleum oils, or a mixture or combination of such oils, or any component or components of such oils which are to be used without further processing by any one

or more of the processes described in subparagraphs (1) through (3) of paragraph (h) of this section, and which, as of January 1, 1973, under the Tariff Schedules of the United States, were not subject to a duty of more than one cent ($0.01) per pound of the hydrocarbons therein contained:

(1) The term "liquefied gases" means the following liquefied or liquefiable gases, namely, ethane, propane, butanes, ethylene, propylene, and butylenes which are derived by refining or other processing of natural gas, crude oil, or unfinished oils.

(2) "Gasoline" means a refined petroleum distillate, including naphtha, jet fuel or other petroleum oils (but not isoprene or cumene having a purity of 50 percent or more by weight, or benzene which meets the ASTM distillation standards for nitration grade) derived by refining or processing crude oil or unfinished oils, in whatever type of plant such refining or processing may occur, and having a boiling range at atmospheric pressure from 80° to 400°F.

(3) "Kerosene" means any jet fuel, diesel fuel, fuel oil or other petroleum oils derived by refining or processing crude oil or unfinished oils, in whatever type of plant such refining or processing may occur, which has a boiling range at atmospheric pressure from 400° to 550°F.

(4) "Distillate fuel oil" means any fuel oil, gas oil, topped crude oil, or other petroleum oils, derived by refining or processing crude oil or unfinished oils, in whatever type of plant such refining or processing may occur, which has a boiling range at atmospheric pressure from 550° to 1200°F.

(5) "Residual fuel oil" means a petroleum oil, which is (i) any topped crude or viscous residuum of crude or unfinished oils or one or more of the petroleum oils defined in subparagraphs (2) through (4) of this paragraph (g), which has a viscosity of not less than 45 seconds Saybolt Universal at 100°F. to be used as fuel without further processing other than by mechanical blending or (ii) crude oil to be used as fuel without further processing other than by blending by mechanical means.

(6) "Asphalt" means a solid or semi-solid cementitious crude oil or derivative of crude oil, 50 percent or more of the constituents of which are bitumins, which is not to be used as fuel and which is to be used without further processing except airblowing or blending by mechanical means.

(7) "Lubricating oils" means any lubricant containing more than 50 percent by volume of refined petroleum distillates or specially treated petroleum residuum.

(8) "Natural gas products" means liquids (under atmospheric conditions), including natural gasoline, which

are recovered by process of absorption, adsorption, compression, refrigeration, cycling, or a combination of such processes, from mixtures of hydrocarbons that existed in a reservoir and which, when recovered and without processing in a refinery or other plant, fall within any of the definitions of products contained in clauses (2) through (4) of this paragraph (g).

(h) "Unfinished oils" means one or more of the petroleum oils listed in clauses (1) through (4) and clause (8) of paragraph (g) of this section or a mixture or combination of such oils, or any component or components of such oils, which are to be further processed in one or more of the following ways:

(1) By distillation with a resulting yield of at least two distinct finished products or unfinished oils, two of which must be equal to not less than 10 percent of the total charge of such imported unfinished oils to a distillation unit. Different grades or specifications of finished products or unfinished oils will not constitute distinct finished products or unfinished oils for purposes of this subparagraph. Distillation of petroleum oils which have been reconstituted by blending of two or more finished products or unfinished oils does not constitute processing for the purposes of this subparagraph.

(2) By catalytic or thermal conversion in process units such as alkylation, coking, cracking, hydrofining, hydrodesulfurization, polymerization, isomerization, dehydrogenation, or refining.

(3) By physical separation established by means of solvent dewaxing, solvent deasphalting, solvent extraction, or extractive distillation.

(i) As used in paragraphs (g) and (h) of this section, the term "petroleum oil" includes only hydrocarbons derived from crude oil or natural gas.

(j) The term "imports from Canada" as used in this proclamation, means entries for consumption or withdrawals from warehouse for consumption of the following items which have been transported into the United States from Canada, by overland means (pipeline, rail, or other means of overland transportation) or over waterways other than ocean waterways, to-wit: crude oil produced in Canada, unfinished oils which have derived from crude oil or natural gas produced in Canada, and finished products which have been produced in Canada from crude oil produced in Canada.

(k) The expression "long-term allocation" means:

(1) That certain allocation made to Commonwealth Oil Refining Company, Inc., of imports of crude and unfinished oils into Puerto Rico dated May 10, 1968—effective January 1, 1968 (as amended).

(2) That certain allocation made to Phillips Petroleum Company of imports of unfinished oils into Puerto Rico—dated December 23, 1965—effective January 1, 1966 (as amended).

(3) That certain allocation made to Sun Oil Company of imports of crude oil into Puerto Rico—effective April 18, 1968 (as amended).

(4) That certain allocation made to Union Carbide Corportion of imports of crude oil and unfinished oils into Puerto Rico—dated April 19, 1968—effective April 19, 1968.

(5) That certain allocation made to Hess Oil and Chemical Corporation of imports of finished products into Districts I–IV—dated December 12, 1967—effective January 1, 1968 (Hess Oil and Chemical Corporation now Amerada-Hess).

(I) The term "imports" includes both entry for consumption and withdrawal from warehouse for consumption."

"Sec. 16 Effective as of May 1, 1973, tariffs upon imports of petroleum and petroleum products listed in Schedule 4, Part 10—"Petroleum, natural gas, and products derived therefrom" of the Tariff Schedules of the United States shall be and are suspended."

In Witness Whereof, I have hereunto set my hand this eighteenth day of April, in the year of our Lord nineteen hundred seventy-three and of the Independence of the United States of America the one hundred ninety-seventh.

,Richard Nixon

APPENDIX B

UNITED STATES
DEPARTMENT OF THE INTERIOR
Oil Import Administration

OIL IMPORT REGULATION 1 (Revision 5)
as amended through March 31, 1971

Sec. 1 Purpose.

These regulations implement Presidential Proclamation 3279, "Adjusting Imports of Petroleum and Petroleum Products into the United States," dated March 10, 1959, as amended, by providing for the discharge of the responsibilities imposed upon the Secretary of the Interior.

Sec. 2 Oil Import Administration.

There is in the Department of the Interior an Oil Import Administration under the direction of an Administrator designated by the Secretary of the Interior. The Administrator is hereby empowered to exercise, pursuant to this regulation, all of the authority conferred upon the Secretary by Proclamation 3279, as amended, and the Administrator may redelegate such authority.

Sec. 3 Allocation periods.

(a) With respect to Districts I-IV and District V, allocations of imports of crude oil, unfinished oils, and finished products (other than residual fuel oil to be used as fuel) will be made for periods of twelve months beginning January 1. Allocations of imports into Districts II-IV of residual fuel oil to be used as fuel will be made for periods of twelve months beginning April 1, and allocations of such imports into District V will be made for periods of twelve months beginning January 1.

(b) Allocations of imports of finished products into Puerto Rico will be made for periods of twelve months beginning January 1.

(c) Allocations of imports of crude oil and unfinished oils into Puerto Rico (except allocations made pursuant to paragraph (c) of section 15) will be made for periods of twelve months beginning April 1.

Sec. 4 Eligibility for allocations.

(a) To be eligible for an allocation of imports into Districts I-IV or into District V of crude oil and unfinished oils, a person must (1) have either refinery capacity or a petrochemical plant in the respective districts and (2) have had refinery inputs or petrochemical plant inputs in the respective districts for the year ending three months prior to the beginning of the allocation period for which the allocation is requested.

(b) To be eligible for an allocation of imports into Puerto Rico of crude oil and unfinished oils, a person must have had refinery capacity in Puerto Rico during the calendar year 1964. Allocations may also be made pursuant to paragraph (c) of section 15.

6/ (c) (Revoked)

6/ (d) (Revoked)

(e) To be eligible for an allocation of imports into Puerto Rico of finished products, other than residual fuel oil to be used as fuel, a person must have imported such products into Puerto Rico during the last half of the calendar year 1958.

(f) To be eligible for an allocation of imports into Puerto Rico of residual fuel oil to be used as fuel, a person must have imported residual fuel oil used as fuel into Puerto Rico during the last half of the calendar year 1958.

(g) A person is not eligible individually for an allocation of imports of crude oil and unfinished oils or finished products if the person is a subsidiary or affiliate owned or controlled, by reason of stock ownership or otherwise, by any other individual, corporation, firm, or other business organization or legal entity. The controlling person and the subsidiary or affiliate owned or controlled will be regarded as one. Allocations will be made to the controlling person on behalf of itself and its subsidiary or affiliate but, upon request, licenses will be issued to the subsidiary or affiliate.

2/ Sec. 5 Applications for allocations and licenses.

Applications for allocations of imports of crude oil, unfinished oils, or finished products and for a license or licenses must be filed with the Administrator, in such form as he may prescribe, not later than 60 calendar days prior to the beginning of the allocation period for which the allocations are required. However, if the 60th day is a Saturday, Sunday, or holiday, the application may be filed on the next succeeding business day. Allocation periods are provided for in section 3 of this regulation. This section does not apply to an application for an allocation pursuant to paragraph (c) of section 15 or to an application for imports into District I of residual fuel oil to be used as fuel.

Sec. 6 Records and inspections.

All persons receiving allocations pursuant to these regulations shall maintain complete records of imports, refinery inputs, petrochemical plant inputs and the outputs of such plants. These records shall be maintained on a current basis so that they will be available for inspection by a representative of the Oil Import Administration. All records required to be maintained pursuant to this section shall be retained for a period of three (3) years. In connection with the performance of the Oil Import Administration's responsibility for assuring full compliance with these regulations and Proclamation 3279, as amended, the person shall permit representatives of the Oil Import Administration to enter upon his office, property, plants and facilities to examine such records and, if deemed necessary in order to verify such records, to inspect the refinery, petrochemical plant, or terminal and all operations being performed within the facilities which include, but are not necessarily limited to refining, receiving, shipping, testing and storage. If requested by the Oil Import Administration representatives, the person shall be required to assign an employee to accompany the representatives of the Oil Import Administration in all inspections, record evaluations, and verification operations. The Oil Import Administration representatives shall not be required to sign any releases prior to entering upon a person's property or installation.

Sec. 7 Licenses.

(a) When an allocation has been made to a person under this regulation, the Administrator shall issue a license or licenses based on the allocation, specifying the amount of crude oil and unfinished oils or finished products which may be imported, the period of time such license shall be in effect, and the districts (District I, Districts I-IV, Districts II-IV, District V or Puerto Rico) into which the importation may be made. The Administrator may amend such licenses.

(b) No license issued pursuant to this section may be sold, assigned, or otherwise transferred.

Amdt. 32/ (c) (1) If an allocation made pursuant to section 9 or 10 of this regulation for the allocation period January 1, 1971 through December 31, 1971, is in excess of 1,300,000 barrels of imports, the Administrator shall first issue a license in the amount of 1,300,000 barrels or 35% of the allocation, whichever amount is greater. The Administrator shall, not later than June 1, 1971, issue a license, effective July 1, 1971, for the balance of the allocation. If the allocation is 1,300,000 barrels of imports or less, the Administrator shall issue a license for the full amount of the allocation.

(2) If an allocation made pursuant to section 11 of this regulation for the allocation period January 1, 1971 through December 31, 1971 is in excess of 2,900,000 barrels of imports, the Administrator shall first issue a license in the amount of 2,900,000 barrels or 35% of the allocation, whichever amount is greater. The Administrator shall, not later than June 1, 1971, issue a license, effective July 1, 1971, for the balance of the allocation. If the allocation is 2,900,000 barrels of imports or less the Administrator shall issue a license for the full amount of the allocation.

31/ Sec. 8 Small quantities.

(a) District Directors of Customs are authorized to permit without a license an entry for consumption of not to exceed 550 U.S. gallons of crude oil, unfinished oils, or finished products which are certified as samples for testing or analysis or which are included in shipments of machinery or equipment and are certified as intended for use in connection therewith, and baggage entries. Unless notified by the Administrator to the contrary, District Directors of Customs are authorized to permit without a license the entry for consumption of bonded fuel aboard an aircraft diverted from an international flight. In each instance in which such an entry is made, the owner of the aircraft shall promptly file with the Administrator, Oil Import Administration, Department of the Interior, Washington, D. C. 20240, a written report of the circumstances in which the entry was made and the quantity entered. Failure promptly to file such report may result in the suspension or abrogation of the privilege of making such entries.

(b) A person desiring to import small quantities of crude oil, unfinished oils, or finished products in circumstances not covered by paragraph (a) of this section shall file with the Administrator a written request for authorization for entry without a license for each shipment, describing the oil and the quantity thereof proposed to be imported and the circumstances which would justify an entry without a license, the date when the shipment is scheduled to arrive or upon which it has arrived, and the port of entry. If the Administrator determines that the entry without a license is consonant with the purposes of Proclamation 3279, as amended, he may authorize such an entry.

29/ Sec. 9 Allocations; petrochemical plants; Districts I-IV, District V.

(a) For the allocation period January 1, 1971 through December 31, 1971, each eligible person with a petrochemical plant in Districts I-IV shall receive an allocation of imports of crude oil and unfinished oils equal to the average barrels per day of petrochemical plant inputs to his petrochemical plants in these districts during the year ending September 30, 1970, multiplied by 11.2 percent.

(b) For the allocation period January 1, 1971 through December 31, 1971, each eligible person with a petrochemical plant in District V shall receive an allocation of imports of crude oil and unfinished oils equal to the average barrels per day of petrochemical plant inputs to his petrochemical plants in this district during the year ending September 30, 1970, multiplied by 11.9 percent.

(c) No allocation for Districts I-IV made pursuant to this section or section 25 shall entitle a person to a license which will allow the importation of unfinished oils in excess of 15 percent of the allocation, and no allocation for District V made pursuant to this section or section 25 shall entitle a person to a license which will allow the importation of unfinished oils in excess of 25 percent of the allocation. However, a person obtaining an allocation for imports of crude oil and unfinished oils pursuant to this section or section 25 may petition the Administrator to adjust the percentage of imports of unfinished oils upward to 100 percent of such person's allocation if the petitioner certifies that the imported unfinished oils will not be exchanged, that the oils will be processed entirely in the petitioner's own petrochemical plant, and that more than 50 percent of the yields (by weight) from the unfinished oils will be petrochemicals or that more than 75 percent (by weight) of recovered product output will consist of petrochemicals.

(d) 'Each allocation made pursuant to this section shall be reduced by the amount of any licenses issued to the applicant under an interim allocation for the allocation period.

(e) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred.

mdt. 26/ Sec. 10 Allocations; refiners; Districts I-IV.

(a) For the allocation period January 1, 1971 through December 31, 1971, the Administrator shall allocate, as provided in paragraph (b) of this section, approximately 600,000 b/d of imports of crude oil into Districts I-IV among eligible persons having refinery capacity in these districts.

(b) Each eligible applicant shall receive an allocation of imports of crude oil based on refinery inputs for the year ending September 30, 1970, and computed according to the following schedule:

Average b/d Input		Percent of Input		No. of Days
0 - 10,000		20.0		
10 - 30,000	(x)	12.0	(x)	365
30 - 100,000		7.0		
100,000 plus		3.5		

However, each such allocation shall be reduced by the amount of any licenses issued to the applicant under an interim allocation for the allocation period.

(c) Under an allocation made pursuant to paragraph (b) of this section, unfinished oils may be imported, but imports of such oils shall not exceed 15 percent of the allocation.

(d) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred, and except as this regulation may provide otherwise, no license issued under such an allocation shall permit the importation of Canadian imports as defined in section 1A of Proclamation 3279 as amended.

. 31/ Sec. 11 Allocations; refiners; District V.

(a) For the allocation period January 1, 1971 through December 31, 1971, the Administrator shall allocate, as provided in paragraph (b) of this section, approximately 229,000 b/d of imports of crude oil into District V among eligible persons having refinery capacity in that district. Such allocations shall supersede the tentative allocations which have been made of imports of crude oil into District V for that allocation period. Licenses issued under tentative allocations shall be charged against the new allocations and shall remain in force.

(b) Each eligible applicant shall receive an allocation of imports of crude oil based on refinery inputs for the year ending September 30, 1970, and computed according to the following schedule:

Average b/d Input		Percent of Inputs		No. of Days
0-10,000)		(60.0)		
10-30,000)	X	(15.0)	X	365
30,000 plus)		(5.0)		

However, each allocation made pursuant to this paragraph (b) shall be reduced by the amount of any license issued to the applicant under an interim allocation for the allocation period.

(c) Under an allocation made pursuant to paragraph (b) of this section, unfinished oils may be imported, but imports of such oils shall not exceed 25 percent of the allocation.

(d) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred.

/Amdt. 31/ Sec. 11A Allocations of crude oil - District V - based upon production of low sulphur residual fuel oil to be used as fuel in District V.

(a) This section provides for the making of allocations of imports into District V of crude oil based upon the production of low sulphur residual fuel oil. To the extent that the provisions of this section are inconsistent with the provisions of other sections of this regulation, the provisions of this section shall be controlling.

(b) In addition to the allocations of imports of crude oil made under section 11 of this regulation, each eligible applicant with refinery capacity in District V who produces in District V low sulphur residual fuel oil to be used as fuel which contains not more than five-tenths of one percent (0.5%) sulphur by weight and which is delivered to consumers for use as fuel, in order to comply with governmental requirements respecting air pollution shall receive an allocation of imports of crude oil equal to the amount in barrels of such low sulphur residual fuel oil to which the applicant certifies both as to production and delivery.

(c) For the purpose of computing import allocations under section 11 of this regulation, crude oil imported pursuant to an allocation under this section 11A or domestic oil received in exchange pursuant to the provisions of section 17 and processed will not qualify as refinery inputs. However, the person receiving the foreign crude oil under an exchange agreement pursuant to section 17 may count such oil as a refinery input.

(d) An application for an allocation of imports of crude oil under this section must be filed with the Administrator no later than 20 days after the last day of the calendar month during which the low sulphur residual fuel oil upon which the application is based was delivered to consumers. An application must be in such form as the Administrator may prescribe.

(e) No license issued under an allocation made pursuant to this section shall be valid for a period longer than six months following the day on which the license is issued.

(f) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred.

(g) The provisions of section 11A as amended by Amendment 18 (35 F.R. 13) will be applicable with respect to allocations made on the basis of low sulphur residual fuel oil to be used as fuel which is produced and delivered before April 1, 1971, and with respect to licenses issued under such allocations.

Sec. 12 Eligibility for and allocations of residual fuel oil to be used as fuel - District I.

. 3/ (a) To be eligible for an allocation of imports into District I of residual fuel oil to be used as fuel a person must:

. 26/ (1) (Revoked)

(2) Be in the business in District I of selling residual fuel oil to be used as fuel and have under his management and operational control a deep-water terminal located in District I into which there has been delivered residual fuel oil to be used as fuel which he owned at the time of delivery, such delivery being the first delivery of that oil into a deep-water terminal in District I; or

(3) Be in the business in District I of selling residual fuel oil to be used as fuel and have a throughput agreement (warehouse agreement) with a deep-water terminal operator under which agreement the person has delivered to the terminal residual fuel oil to be used as fuel which he owned when it was so delivered, such delivery being the first delivery of that oil into a deep-water terminal in District I. For the purposes of this section, "throughput agreement" means an agreement which provides for the delivery to a deep-water terminal by a person of residual fuel oil which he owns and for a right in such person to withdraw on call an identical quantity of of such oil from the terminal. A bona fide throughput agreement will be deemed to exist (1) only if the person operating under the agreement owns the oil at the time it is delivered to the terminal and only if that delivery is the first delivery of that oil into a deep-water terminal in District I; and (2) only if the person has delivered at least 25,000 barrels of residual fuel oil to be used as fuel into the terminal under the agreement during the allocation period ending March 31, 1967, or any subsequent allocation period.

3/ (b) The maximum level of imports of residual fuel oil to be used as fuel into District I for a particular allocation period April 1 through March 31 shall be the level of imports of that product into that district during the calendar year 1957 as adjusted by the Secretary of the Interior as he may determine to be consonant with the objectives of Proclamation 3279 as amended. From this level the Administrator shall allocate in accordance with the decisions of the Oil Import Appeals Board, 5,480 b/d to the Department of Defense, 5,480 b/d to the General Services Administration, and the balance pursuant to paragraph (c) of this section.

/Amdt. 3/ (c) (1) The Administrator shall make allocations for an allocation period April 1 through March 31 to each eligible applicant in District I of such quantities of imports of residual fuel oil to be used as fuel as the applicant certifies are required by the applicant to meet his obligations under firm existing contracts between the applicant and customers in District I. The Administrator shall, under such an allocation, (1) issue during the allocation period licenses in such amounts as the holder of the allocation from time to time certifies have been delivered to customers under such contracts during the first eleven months (April--February) of the allocation period and (2) issue during the next allocation period licenses in such amounts as the holder of the allocation certifies have been delivered in the last month (March) of the preceding allocation period; and

(2) The Administrator shall make allocations for an allocation period April 1 through March 31 and simultaneously issue licenses to each eligible applicant in District I of imports of residual fuel oil to be used as fuel in quantities equal to the quantities of such product which the applicant certifies that he has sold and delivered to customers in District I during the allocation period or the last month (March) of the preceding allocation period, exclusive of quantities which the applicant has delivered under contracts and which constitute the basis for the issuance of licenses pursuant to subparagraph (1) of this paragraph.

/Amdt. 3/ (d) (1) To apply for an allocation of imports of residual fuel oil to be used as fuel in District I pursuant to subparagraph (1), paragraph (c), of this section (imports required to meet obligations under firm existing contracts), an eligible applicant should complete and submit OIA Form Resid-1 (white) to the Oil Import Administration. Instructions for completing this form are set forth on the reverse side of the form. An eligible applicant whose application is found to be in order will receive an allocation of imports of residual fuel oil to be used as fuel in District I for the allocation period ending March 31. OIA Form Resid-1 may be submitted at any time during the allocation period.

(2) Import licenses will not be issued under such an allocation until deliveries of residual fuel oil to be used as fuel have actually been made under the contracts on which the allocation is based and until the deliveries have been certified to the Oil Import Administration. To obtain an import license, the holder of an allocation should complete and submit OIA Form Resid-2 (green), to the Oil Import Administration, certifying the quantities of oil that have been delivered under such contracts. OIA Form Resid-2 may be submitted at any time during the allocation period, and, with respect to deliveries made in the last month (March) of an allocation period, may be submitted in the next allocation period.

(3) Each month, the Oil Import Administration will process all OIA Forms Resid-2 which have been received by the 10th day of that month. Licenses will promptly be issued to the holder of an allocation whose pending OIA Forms Resid-2 are in order in the amount of deliveries under contracts certified on such forms. OIA Forms Resid-2 received by the Oil Import Administration after the 10th day of a month may be held and processed in the following month.

(4) In the event that firm contracts which form the basis of an allocation are terminated or renegotiated during the allocation period, the holder of the allocation shall so advise the Oil Import Administration in writing and the allocation will be correspondingly adjusted.

3/ (e) (1) To apply for an allocation and license pursuant to subparagraph (2), paragraph (c) of this section (based on sales and deliveries other than under firm existing contracts--for example, sales--"under the rack"), an eligible applicant should complete and submit OIA Form Resid-2 (green) to the Oil Import Administration.

(2) An eligible applicant may complete and submit an OIA Form Resid-2 at any time during an allocation period. By way of example, he may request an allocation and license on the basis of sales and deliveries made to customers during any month of the allocation period or the last month (March) of the preceding allocation period, or he may base his request upon sales and deliveries made over a period of 3 or 4 months of the allocation period. A person may find that, under arrangements with his suppliers, he has no need for an import allocation or license. If the occasion arises that an allocation and license are required at a later date, he may then submit an OIA Form Resid-2 to the Oil Import Administration upon which an allocation and license will be issued.

(3) Each month, the Oil Import Administration will process all OIA Forms Resid-2 which have been received by the 10th day of that month. Licenses will promptly be issued to each eligible applicant whose pending OIA Forms Resid-2 are in order in the amount of sales and deliveries certified on such forms. OIA Forms Resid-2 received by the Oil Import Administration after the 10th day of a month may be held and processed on the following month.

/ (f) All licenses issued during that part of an allocation period April 1 through January 31 shall expire at the end of the allocation period in which they are issued. Licenses issued during the months of February and March in an allocation period shall expire at the end of the next succeeding allocation period.

Example. Licenses issued in July 1967, expire on March 31, 1968, the end of the allocation period April 1, 1967 - March 31, 1968. Licenses issued in February and March 1968 expire March 31, 1969.

hereafter, each succeeding allocation made to such a person shall e reduced by the amount by which shipments (as described above in his paragraph) made by or attributable to such person during the alendar year immediately preceding the beginning of the allocation eriod exceeds shipments made by or attributable to such person during ne calendar year 1965.

(c) (1) In instances in which the Secretary determines that ccomplishment of the objectives of Proclamation 3279, as amended, ill not be impaired, allocations of imports of crude oil and unfinished ils may be granted to persons as feedstocks for facilities which n the Secretary's judgment will promote substantial expansion of nployment in Puerto Rico through industrial development.

(2) A person seeking such an allocation should file an plication with the Administrator. The application should disclose n detail the nature of the facility which the applicant proposes to nstruct, the proposed location of the facility, the capacity of ch facility, the feedstocks to be charged to the facility, the oducts to be produced and the anticipated destinations of such oducts, the capital outlay involved, and the manner in which nstruction of the facility would promote substantial expansion of ployment in Puerto Rico through industrial development.

(3) Each such allocation shall be subject to the following nditions and restrictions:

(i) that the profits from the operation of the facility during a minimum period of ten years be invested in Puerto Rico in ways which will tend to promote substantial expansion of employment;

(ii) that all operations of the facility be conducted in accordance with sound business principles in order to provide maximum funds for investment in Puerto Rico;

(iii) that the Secretary or his authorized representative be given access upon request to all records of transactions pertaining to the operations of the facility, including the purchase of feedstocks for, and the sale and shipment of finished products, unfinished oils, and petrochemical products by, the facility;

(iv) that all feedstocks imported under licenses issued pursuant to the allocation shall be derived from crude oil produced in the Western Hemisphere (North America, Central America, South America, and the West Indies), except in those instances in which this requirement is waived by the Secretary;

/Amdt. 26/ Sec. 13 Finished products.

(a) For the allocation period January 1, 1971 through December 31, 1971, there is allocated to the Department of Defense 20,000 b/d of imports of finished products into Districts I-IV and 7,500 b/d of imports of finished products into District V. For the same allocation period, 15,000 b/d of finished products have been allocated pursuant to subparagraph (4) of paragraph (b) of section 3 of Proclamation 3279, as amended.

(b) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred.

Sec. 14 Determination of maximum level of imports - Puerto Rico.

Pursuant to paragraph (c) of section 2 of Proclamation 3279, as amended, the Secretary will, for each allocation period, establish a maximum level of imports of crude oil and unfinished oils into Puerto Rico. For each allocation period, the average barrels per day of imports of residual fuel oil to be used as fuel and of imports of finished products other than residual fuel oil to be used as fuel into Puerto Rico shall not exceed the average barrels per day of imports of such products, respectively, into Puerto Rico during the last half of the calendar year 1958. The Secretary may adjust such level to meet a demand in Puerto Rico for finished products that would not otherwise be met.

Sec. 15 Allocations of crude oil and unfinished oils - Puerto Rico.

(a) For each allocation period, the Administrator shall recommend to the Secretary an allocation of imports of crude oil and unfinished oils for each applicant having refinery capacity in Puerto Rico during the calendar year 1964 based upon estimates of the requirements of such applicant for the allocation period. Allocations will be made by the Secretary upon consideration of the Administrator's recommendations.

/Amdt. 6/ (b) If, during the calendar year 1968, a person who will receive an allocation under paragraph (a) of this section for the allocation period April 1, 1968, through March 31, 1969, ships to Districts I-IV or to District V unfinished oils or finished products (other than residual fuel oil to be used as fuel), or sells unfinished oils or finished products (other than residual fuel oil to be used as fuel) which were shipped to Districts I-IV or to District V in excess of the volume of unfinished oils or finished products (other than residual fuel oil to be used as fuel) which he so shipped or which he sold and were so shipped to the respective districts during the calendar year 1965, the person's allocation for the allocation period April 1, 1969 through March 31, 1970, shall be reduced by the amount of the excess.

(v) that no licenses will be issued under the allocation until the facility is ready to go on stream and thereafter only upon a certification of amounts to be directly used by the facility;

(vi) that all imports made under such licenses be directly used by the facility; and

(vii) that imports in storage be taken into account by the Administrator in issuing licenses under the allocation for the succeeding allocation period.

An allocation shall, in addition, be subject to such other conditions and restrictions as the Secretary may deem necessary to prevent impairment of the objectives of Proclamation 3279, as amended, and to assure that any imports so allocated are used for the purposes for which the allocation is made and that the holder of such allocation fulfills commitments made in connection with the making of the allocation. The holder of such an allocation shall comply with all such conditions and restrictions, and noncompliance shall be grounds for the suspension or revocation of the allocation.

(d) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred.

Sec. 16 Allocations of finished products - Puerto Rico.

(a) For the allocation period beginning January 1, the Administrator shall allocate to each eligible applicant for an allocation for Puerto Rico a quantity of imports of finished products equal to the applicant's average barrels daily of imports of such products for the last half of the calendar year 1958 multiplied by the number of days in the allocation period. Separate allocation shall be made for imports of residual fuel oil to be used as fuel and of imports of finished products other than residual fuel oil to be used as fuel.

(b) In the event that the maximum level of imports of residual fuel oil to be used as fuel or of other finished products is increased to meet a demand in Puerto Rico that would not otherwise be met, the Administrator shall increase the individual allocation of the person who has the demand.

(c) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred.

dt. 10/Sec. 17 Use of imported crude oil and unfinished oils.

(a) Except as provided in paragraph (b) of this section, each person who imports crude oil or unfinished oils under a license issued pursuant to an allocation made under section 9, 10, 11, 15, or 25 of this regulation must process the oils so imported in his own refinery or petrochemical plant.

(b) (1) Subject to the provisions of this paragraph (b), a person
nports crude oil or unfinished oils under an allocation made under
ons 9, 10, 11, paragraph (a) of section 15 or section 25 of this
ation may exchange his imported crude oil either for domestic crude
r for domestic unfinished oils or exchange his imported unfinished
either for domestic unfinished oils or for domestic crude oil.
er, a person receiving an allocation under section 9 may be restricted
e exchange of imported unfinished oils, as provided in paragraph (c)
at section.

(2) A proposed agreement for each such exchange must be
ted to the Administrator before any action involved in the the
nge is taken.

(3) Each such exchange must be effected on a ratio of not less
one barrel of domestic oil for each barrel of imported oil unless
ferent exchange ratio is approved by the Administrator.

(4) In any such exchange, the person who is exchanging oil
ted pursuant to an allocation under section 9, 10, 11, 15, or 25
omestic oil must take delivery of the domestic oil and process
his own refinery or petrochemical plant, located in the same
ct for which the allocation is granted, not later than 120 days
the day on which the imported oil is delivered to the other
to the exchange.

(5) Each such exchange must be on an oil-for-oil basis, and
hange involving adjustments, settlements, or accounting on a
ry basis is permissible.

(6) Any such exchange must not be otherwise unlawful.

8 Reports.

a) Each person who imports crude oil, unfinished oils, or
ed products under a license issued under this regulation shall
to the Administrator the quantities in barrels corrected to
hrenheit of crude oil, unfinished oils, and finished products
orted. Each report shall state through which port of entry
portation was made and shall specify the kinds of unfinished
nd finished products imported. Each report shall be filed
he Administrator within fifteen (15) days of the end of a
ular month.

b) Each person who exchanges oil pursuant to section 17 of this
tion shall report the exchange to the Administrator on such forms
shall prescribe. In addition, any changes occurring during an
tion period in the types of oils or the exchange ratio shall be
ed.

Sec. 19 False statements.

Persons concealing material facts or making false statements in or in connection with any applications or reports filed with the Administrator or in connection with any license presented to or statements made to a Collector of Customs with respect to imports of crude oil, unfinished oils, or finished products, are guilty of a crime and upon conviction may be punished by fine or imprisonment or both.

Sec. 20 Revocation or suspension of allocations or licenses.

The Administrator may, after a hearing, revoke or suspend any allocation or license issued under this regulation, on grounds relating to the national security, or the violation of the terms of Proclamation 3279, this regulation, or licenses issued pursuant thereto.

Sec. 21 Appeals.

Amdt. 23/ (a) There is in the Department of the Interior, an Oil Import Appeals Board comprised of a representative each from the Departments of the Interior, Justice and Commerce, designated, respectively, by the Secretaries of such Departments. The Board shall elect a Chairman from its own membership.

/Amdt. 24/ (b) The Appeals Board shall consider petitions by persons affected by this regulation that fall within the limits of the jurisdiction specified in this paragraph and may, within the limits of the maximum levels of imports established in section 2 of Proclamation 3279, as amended:

(1) Reverse or modify on grounds of error actions taken by the Administrator on applications for allocations under this regulation;

(2) Modify any allocation made to any person under this regulation on the grounds of exceptional hardship;

(3) Grant allocations of crude oil and unfinished oils in special circumstances to persons with importing histories who do not qualify for allocations under this regulation;

(4) Grant allocations of finished products on the grounds of exceptional hardship to persons who do not qualify for allocations under this regulation; and

(5) Review the revocation or suspension of any allocation or license.

(c) (1) Except as provided in subparagraphs (2) and (3) of this paragraph, the modification or grant of an allocation by the Appeals Board shall become effective in the allocation period, as provided in section 3 of this regulation, which succeeds the allocation period during which the Board's decision is made and no decision of the Appeals Board shall become effective unless it is made and the Administrator is notified more then 30 calendar days before the beginning of an allocation period

(2) An allocation granted pursuant to clause (2) or (3) of paragraph (b) of this section to a person who has become ineligible because of total loss of refinery capacity, petrochemical plant, or deep-water terminal facilities may be made effective within the allocation period during which the Appeals Board's decision is made.

(3) The Board may make effective in a current allocation period a grant or a modification of an allocation of imports when a quantity of such imports has been made available for such purpose by the Secretary.

(d) The Appeals Board may adopt, promulgate, and publish such rules and procedures as it deems appropriate for the conduct of its business. The action of the Appeals Board on a petition, if within the jurisdiction conferred upon it by paragraph (b), shall constitute final action within the Department for that case, but interpretations by the Board of this regulation or of Proclamation 3279, as amended, are not thereafter binding upon the Secretary.

(e) For the allocation period January 1, 1971 through December 31, 1971, 45,000 b/d of imports into Districts I-IV of crude oil and unfinished oils (including Canadian imports as defined in section 1A of Proclamation 3279, as amended) and finished products and 4,000 b/d of imports into District V of crude oil, unfinished oils, and finished products are made available to the Oil Import Appeals Board.

Sec. 22 Definitions.

As used in this regulation:

(a) "person" includes an individual, a corporation, firm or other business organization or legal entity, and an agency of a State, territorial, or local government, but does not include a department, establishment, or agency of the United States;

(b) "District I" comprises the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, West Virginia, Virginia, North Carolina, South Carolina, Georgia, and Florida, and the District of Columbia;

(c) "Districts II-IV" means all of the States of the United States except those States within District I and District V;

(d) "Districts I-IV" means the District of Columbia and all of the States of the United States except those States within District V;

(e) "District V" means the States of Arizona, Nevada, California, Oregon, Washington, Alaska, and Hawaii;

/Amdt. 6/ (f) "crude oil" means crude petroleum as it is produced at the wellhead and liquids (under atmospheric conditions) that have been recovered from mixtures of hydrocarbons which existed in a vaporous phase in a reservoir and that are not natural gas products and the initial liquid hydrocarbons produced from the tar sands;

(g) "finished products" means any one or more of the following petroleum oils, or a mixture or combination of such oils, which are to be used without further processing except blending by mechanical means:

Amdt. 24/ (1) liquefied gases - ethane, propane, butanes, ethylene, propylene, and butylenes (but not methane) which are derived from natural gas or crude oil and which, to be maintained in a liquid state at ambient temperatures, must be kept under greater than atmospheric pressures;

(2) gasoline - a refined petroleum distillate which, by its composition, is suitable for use as a carburant in internal combustion engines;

(3) jet fuel - a refined petroleum distillate used to fuel jet propulsion engines;

(4) naphtha - a refined petroleum distillate falling within a distillation range overlapping the higher gasoline and the lower kerosenes;

(5) fuel oil - a liquid or liquefiable petroleum product burned for lighting or for the generation of heat or power and derived directly or indirectly from crude oil, such as kerosene, range oil, distillate fuel oils, gas oil, diesel fuel, topped crude oil, residues;

(6) lubricating oil - a refined petroleum distillate or specially treated petroleum residue used to lessen friction between surfaces;

26/ (7) residual fuel oil - (i) topped crude oil or viscous residuum which has a viscosity of not less than 45 seconds Saybolt universal at 100° F. and (ii) crude oil which is to be used as fuel without further processing other than by blending by mechanical means.

(8) asphalt - a solid or semi-solid cementitious material which gradually liquefies when heated, in which the predominating constituents are bitumins, and which is obtained in refining crude oil;

(9) natural gas products - means liquids (under atmospheric conditions), including natural gasoline, which are recovered by a process of absorption, adsorption, compression, refrigeration, cycling, or a combination of such processes, from mixtures of hydrocarbons that existed in a vaporous phase in a reservoir and which, when recovered and without processing in a refinery, otherwise fall within any of the definitions of products contained in clauses (2) through (5), inclusive, of this paragraph (g);

(h) "unfinished oils" means one or more of the petroleum oils listed in paragraph (g) of this section, or a mixture or combination of such oils which are to be further processed other than by blending by mechanical means;

(i) "Administrator" means Administrator, Oil Import Administration, Department of the Interior, or his duly authorized representative;

(j) the words "importation," "importing," "import," "imports," and "imported" include both entry for consumption and withdrawal from warehouse for consumption;

6/ (k) "refinery inputs" means feedstocks charged to 'refinery capacity'

(1) and include only--

(i) crude oil;

(ii) unfinished oils imported pursuant to an allocation, and

(iii) unfinished natural gas products

(2) but do not include inputs of crude oil or unfinished oils imported pursuant to paragraph (e), (f), or (h) of section 1A of Proclamation 3279, as amended, or, with respect to refinery inputs in District V, inputs of crude oil or unfinished oils imported pursuant to clause (4) of paragraph (a) of section 1 of Proclamation 3279, as amended.

/Amdt. 7/ (l) "Refinery capacity" means a plant which:

(1) Includes equipment for separating or converting hydrocarbons to finished products or unfinished oils;

(2) Uses crude oil as the predominant feedstock, and

(3) Converts for plant use as fuel in heating or generating power or for sale not less than 70 percent by weight of total refinery inputs into at least two separate and distinct finished products other than liquefied gases, each of which falls in a different one of the categories specified in subparagraphs (2) through (8) of paragraph (g) of this section--that is, gasoline, jet fuel, naphtha, fuel oil, lubricating oil, residual fuel oil, or asphalt--and each of which must be equal to not less than 4 percent by weight of total refinery inputs. Different grades or specifications of a finished product will not constitute separate and distinct finished products for the purpose of this definition.

(m) "deep-water terminal" means a permanent land installation which:

(1) consists of bulk storage tanks having not less than 100,000 barrels of operational capacity, pumps, and pipelines used for the storage, transfer and handling of residual fuel oil;

(2) is adjacent to waterways that permit the safe passage to the installation of tanker rated 15,000 cargo deadweight tons; and

(3) has a berth that will permit the delivery of residual fuel oil to be used as fuel into the installation by direct connection from a tanker rated at 15,000 cargo deadweight tons, drawing not less than 25 feet of water, and moored in the berth. Cargo deadweight tons represent the carrying capacity of a tanker, in tons of 2,240 pounds, less the weight of fuel, water, stores, and other items necessary for use on a voyage;

/Amdt. 7/ (n) "Petrochemical plant" means a facility or plant complex;

(1) Which includes equipment for converting hydrocarbons to petrochemicals by chemical reaction;

(2) Which manufactures for plant use or sale one or more separate and distinct petrochemicals by chemical conversion of each separate petrochemical plant input feedstock stream which is claimed by an applicant as a basis for obtaining an allocation, and

(3) In which more than 50 percent by weight of each separate feedstock stream is converted by chemical reaction into petrochemicals or in which over 75 percent by weight of recovered product output of each separate feedstock stream consists of petrochemicals which were converted by chemical reaction from such inputs.

6/ (o) "petrochemical plant inputs" means feedstocks charged to a petrochemical plant

(1) and include only:

(i) crude oil,

(ii) unfinished oils (except those unfinished oils specifically excluded in subparagraph (2) of this paragraph) produced in Districts I-IV and District V, and unfinished oils imported pursuant to an allocation,

(2) but do not include:

(i) unfinished oils which are produced in a petrochemical plant in the manufacture of petrochemicals and subsequently charged to a unit which is a part of the same petrochemical plant in which they were produced or to any other petrochemical plant which is owned or controlled by the same person who claims the initial petrochemical plant inputs from which the unfinished oils are derived,

(ii) crude oil and unfinished oils which are imported into the United States by pipeline, rail, or other means of overland transportation from the country where they were produced, which country in the case of unfinished oils produced from crude oil, liquefied gases or natural gas products is also the country of production of the crude oil, liquefied gases or natural gas products from which the unfinished oils were processed or manufactured,

(iii) unfinished oils which are obtained by transactions such as sales, purchases, or exchanges which are designed to avoid the exclusion specified in subdivision (i) of this paragraph (2), and

(iv) benzene or toluene or any xylene derived from crude oil, liquefied gases or natural gas products which met the distillation specification of the ASTM standard specifications for that chemical but which subsequently has been recycled and mixed with other hydrocarbons, commingled, or purposely debased.

/Amdt. 7/ (p) "petrochemicals" means carbon or organic compounds (other than finished products or unfinished oils) which are produced from petrochemical plant inputs by chemical reaction in a petrochemical plant.

/Amdt. 6/ (q) As used in paragraph (g) and paragraph (h) of this section the term "petroleum oils" includes liquid hydrocarbons derived from crude oil.

/Amdt. 30/Sec. 23 Canadian Imports -- Districts I-IV.

(a) As used in this section, the term "Canadian imports" means imports from Canada of crude oil which has been produced in Canada and unfinished oils which have been derived from crude oil or natural gas produced in Canada and which have been transported into the United States by overland means or over waterways other than ocean waterways.

(b) To be eligible for an allocation of imports under paragraph (d) or (e) of this section, a person must have in Districts I-IV a facility capable of processing Canadian imports.

(c) The Administrator shall, in accordance with the terms of paragraphs (d) and (e) of this section, make allocations for the allocation period January 1, 1971 through December 31, 1971, of not to exceed 450,000 average barrels daily of Canadian imports into Districts I-IV. Licenses issued under such allocations shall permit the entry or withdrawal from warehouse for consumption of Canadian imports only.

(d) (1) The Administrator shall first make allocations of Canadian imports to eligible applicants who received allocations of such imports for the period July 1, 1970 through December 31, 1970, either from the Administrator under section 29 or from the Oil Import Appeals Board under section 21, or from both. Each such applicant shall be entitled to an allocation of Canadian imports equal to twice the total of allocations expressed in barrels, which he received under section 29 or section 21, or both sections, for the period July 1, 1970 through December 31, 1970, less twice the quantity, expressed in barrels, of natural gas liquids which he imported from Canada during the period April 1, 1970 through September 30, 1970. As used in this subparagraph, "natural gas liquids" means natural gas products and other hydrocarbons, such as ethane, propane, and butanes, or mixtures thereof, recovered from Canadian natural gas by means other than refining.

(2) If an applicant entitled to an allocation under subparagraph (1) of this paragraph would receive a larger allocation under paragraph (e) of this section, he shall be given the larger allocation in lieu of an allocation under subparagraph (1) of this paragraph.

(e) (1) Each eligible applicant shall be entitled to an allocation
nadian imports equal to the total of the facility sub-allocations
to such person for each facility listed by the applicant in his
ication. The Administrator shall make a facility sub-allocation
a particular facility according to the following formula:

$$\frac{\text{Eligible applicant's qualified inputs to a particular facility}}{\text{Total qualified inputs to all facilities listed in applications of all eligible applicants}} \quad \text{X} \quad \text{Quantity of Canadian imports not allocated under paragraph (d)}$$

ed in the formula, "qualified inputs" means refinery inputs to
ery capacity, and petrochemical plant inputs to facilities other
refinery capacity, made during the year ending September 30, 1970.

(2) With respect to new or reactivated refinery capacity, or
chemical plants in Districts I-IV, the Administrator may make
ity sub-allocations in accordance with, and subject to, the
sions of section 25 of this regulation, except that the facility
llocations shall be computed according to the formula set forth
bparagraph (1) of this paragraph (e). Subparagraphs (3) and (4)
ragraph (b) of section 25 shall have no application with respect to
s estimated for the purposes of a facility sub-allocation.
raph (d) of section 25 shall be applicable only with respect to
e allocations of Canadian imports.

(3) A person who receives an allocation under this paragraph (e)
not receive an allocation under paragraph (d) of this section.

(f) Each allocation made to a person under paragraph (d) or (e)
is section shall be reduced by the amount of licenses issued under
nterim allocation or partial allocation of Canadian imports made
at person for the allocation period.

(g) A person receiving an allocation under paragraph (d) of this
on must process in his facilities a quantity of Canadian imports
to at least 50 percent of that allocation. A person receiving
location under paragraph (e) of this section must process in each
ity for which a facility sub-allocation is made a quantity of
ian imports equal to at least 50 percent of that facility sub-
ation. For the purposes of this paragraph, blending by mechanical
does not constitute processing.

(h) If a person who receives an allocation of Canadian imports der this section fails to import the total quantity of imports ecified in the allocation, or if he fails to process all such imports nd domestic oil received in exchange for such imports) in his facilities efore March 1, 1972, or if he fails to meet the requirement of ragraph (g) of this section, then any allocation of Canadian imports, any allocation for Districts I-IV to which such person may otherwise entitled under section 9, 10, or 25 of this regulation, for the first location period beginning after January 1, 1972, shall be reduced by e Administrator by the amount of Canadian imports which such person s failed to import, or by the amount of Canadian imports and exchanged l which such person has failed to process in his facilities before rch 1, 1972, or by the amount of Canadian imports by which he failed meet the requirements of paragraph (g), except that the Administrator ed not make such a reduction to the extent that (1) such person monstrates to the satisfaction of the Administrator that such failures re without such person's fault and were beyond his control, or (2) ch person on or before May 1, 1971, in writing, relinquishes all or rt of an allocation made under this section and returns to the ministrator licenses issued thereunder.

(i) A person to whom an allocation is made by the Administrator der this section shall report and certify in writing to the Administrator, l Import Administration, Department of the Interior, Washington, D.C. 240, not later than March 15, 1971, (1) the total quantity of nadian imports which that person imported during the period July 1, 70 through December 31, 1970, pursuant to an allocation made under ction 29 of this regulation, and (2) the quantity of such imports at were processed in his facilities before March 1, 1971. The amount reported and certified shall be subject to verification by the ministrator. If a person to whom an allocation is made under this ction fails to file by March 15, 1971, the written report and rtification required by this paragraph, the Administrator shall suspend l licenses issued under an allocation made under this section until written report and certification are received.

(j) If a person who received an allocation of Canadian imports der section 29 of this regulation failed to import the total quantity imports specified in the allocation or (unless an exchange was approved) he fails to process such imports in his facilities before March 1, 1971, en any allocation for Districts I-IV to which such person may otherwise entitled under section 9, 10, or 25 of this regulation for the first ocation period beginning after March 1, 1971, shall be reduced by Administrator by the amount of Canadian imports which such person led to import or which such person has failed to process in his ilities before March 1, 1971, except that the Administrator need not e such a reduction to the extent that (1) such person demonstrates

satisfaction of the Administrator that such failures were
t such person's fault and were beyond his control, or (2) such
on or before August 1, 1970, in writing, relinquished all or
f the allocation made under section 29 and returned to the
istrator licenses issued thereunder.

k) An allocation made pursuant to this section shall not be
assigned, or otherwise transferred. Each person who imports
an imports under an allocation made pursuant to this section
process such imports (or oil received in an exchange) only in
cilities set forth in his application.

1) A person who imports Canadian imports under an allocation
ursuant to this section may exchange not to exceed 50 percent of
mports for domestic crude oil or domestic unfinished oils. A
ed agreement for each such exchange must be reported to the
strator before any action involved in the exchange is taken.
uch exchange must be effected on a ratio of not less than one
of domestic oil for each barrel of Canadian imports.

m) If a person holds an allocation of Canadian imports under
ection and if he also holds an allocation of imports under section 9,
25 for the period January 1, 1971 through December 31, 1971, he
tain from the Administrator a license which will permit him to
Canadian imports in a quantity not exceeding two-thirds of the
of the allocation made under section 9, 10, or 25. Such licenses
be charged against the allocation made under section 9, 10, or 25.

n) Under the provisions of section 1A of Proclamation 3279, as
d, (35 F.R. 19392) "entries for consumption of crude oil or
shed oils transported by pipeline may be made until midnight
y 15, 1972, under any license authorizing such imports from
" into Districts I-IV for the period January 1, 1971 through
er 31, 1971.

) An application for an allocation under this section shall be
letter or telegram to the Administrator, Oil Import Administration,
ment of the Interior, Washington, D. C. 20240. Applications must
eived by the Administrator on or before March 5, 1971. An application
ontain the following information, which shall be certified by an
of the applicant:

(1) The nature of each of the applicant's facilities in which
an imports will be processed.

(2) The location of each such facility.

(3) The total barrels of natural gas liquids (see
graph (1) of paragraph (d)) imported from Canada during the
April 1, 1970 through September 30, 1970.

(4) The total barrels of qualified inputs (as defined in subparagraph (1) of paragraph (e)) for each such facility during the year ending September 30, 1970.

An officer of an applicant shall also certify in his application that, if an allocation of Canadian imports is made to the applicant under this section, the applicant will process all such imports (and all oil exchanged for such imports) in such facilities before March 1, 1972.

ndt. 16/Sec. 24 Aromatics and aliphatic hydrocarbons.

(a) Benzene or toluene or any xylene derived from crude oil, liquefied gases, or natural gas products which meets the distillation specification of the ASTM standard specifications for that chemical is neither a finished product nor an unfinished oil. However, a mixture of hydrocarbons derived from crude oil, liquefied gases or natural gas products which contains benzene, toluene, or xylenes but does not meet the distillation specification of the ASTM standard specifications for any of these chemicals is either a finished product or an unfinished oil.

(b) Materials which are derived from crude oil, liquefied gases or natural gas products and which are aliphatic mono-olefins or paraffins in the range of C_5-C_{15} are unfinished oils or finished products.

dt. 9/ Sec. 25 Allocations of crude and unfinished oils--Districts I-IV, District V--new or reactivated refinery capacity and petrochemical plants--based upon estimated inputs.

(a) (1) The Administrator may make allocations of imports of crude oil and unfinished oils with respect to new or reactivated refinery capacity and petrochemical plants as provided in this section.

(2) Except as provided in paragraph (j), a person seeking such an allocation must file an application with the Administrator no later than 60 days prior to the beginning of an allocation period. The application shall disclose in detail such information as the Administrator may require, including:

(i) The nature of the facility,

(ii) The location of the facility,

(iii) The products and the quantity of each product to be produced,

(iv) The capital outlay involved,

(v) The expected average barrels per day of qualified feedstocks inputs to such facility,

(vi) The identification of the feedstocks, and the source thereof,

(vii) The date that the facility went on stream or is scheduled to go on stream, and

(viii) Whether this facility will replace an existing facility which is to be or has been shut down.

(b) (1) Subject to the limitations set forth in subparagraph (3)
is paragraph, if the new or reactivated refinery capacity is
luled to come on stream during the allocation period for which
llocation is requested and if the applicant has no other refinery
ity, the allocation shall be computed according to the schedule
ragraph (b) of section 10 or 11 (as the case may be) on the basis
e quantity of inputs (divided by 365) which it is estimated will
de to such capacity during that allocation period. An applicant
eceives an allocation for a particular allocation period pursuant
is subparagraph (1) may be eligible for an allocation pursuant to
ragraph (2) of this paragraph for the next succeeding allocation
d.

(2) (i) Subject to the limitations set forth in subparagraph (3)
is paragraph, if the new or reactivated refinery capacity has come
ream during the allocation period immediately preceding the allocation
d for which the allocation is requested and if the applicant has no
refinery capacity, the allocation shall be computed according to
chedule in paragraph (b) of section 10 or 11 (as the case may be)
e basis of the sum (divided by 365) of (i) the refinery inputs actually
to the new or reactivated refinery capacity during months of the
ation period immediately preceding the allocation period for which
llocation is requested and (ii) the inputs which it is estimated
be made to such capacity during the number of months which, when
ned with the months in clause (i), will constitute a period of
nths.

(ii) An applicant to whom an allocation is made under this subparagraph (2) shall not receive an allocation under section 9, or paragraph (b) of section 10 or 11.

(3) The maximum quantity of estimated inputs which an applicant
laim for the purposes of an allocation based entirely on estimated
s pursuant to subparagraph (1) of this section shall be (i) 11
on barrels with respect to all new or reactivated refinery capacity
tricts I-IV, (ii) 11 million barrels with respect to such capacity
strict V, (iii) 4 million barrels with respect to all new or
ivated petrochemical plants in Districts I-IV, and (iv) 4 million
ls with respect to such plants in District V. The maximum quantity

f estimated inputs which an applicant may claim for the purposes of
n allocation based on a combination of actual and estimated inputs pursuant
o subparagraph (2) of this paragraph shall be the particular maximum
uantity specified in the first sentence of this subparagraph (3)
ultiplied by the number of months of estimated inputs divided by 12.

(4) If the applicant has other refinery capacity, inputs
stimated as provided in subparagraph (1) or (2) of this paragraph shall
e added to the inputs of the applicant's other capacity for the purpose
f computing an allocation under section 10 or 11.

(c) Allocations with respect to new or reactivated petrochemical
lants shall be computed under section 9 of the regulations on the basis
f estimated petrochemical plant inputs or a combination of actual and
stimated inputs as provided for with respect to refinery capacity in
aragraph (b) of this section 25.

(d) (1) If an allocation based in whole or in part on estimated
nputs is made to an applicant pursuant to this section, the actual
nputs submitted by the applicant as a basis for allocation in
ucceeding allocation periods will be adjusted upward or downward to
ompensate for the difference between the estimated inputs and the
ctual inputs made during the period for which inputs were estimated.

(2) If the estimated inputs upon which an allocation is based
xceed the actual inputs made by more than 5 percent of the estimated
nputs, in addition to the adjustment downward provided by subparagraph (1)
f this paragraph the applicant shall be penalized for the overestimate
s provided in this subparagraph (2). As a penalty, the actual inputs
ubmitted by the applicant as a basis for allocations for succeeding
llocation periods shall be further reduced by the number of barrels by
hich the estimated inputs exceeded the actual inputs by more than 5
ercent of the estimated inputs. However, to the extent that an applicant
emonstrates to the satisfaction of the Administrator that all or a part
f the excess of estimated inputs over actual inputs was attributable to
cts of God, fires or explosions, the Administrator may reduce the number
f barrels of excess for which the penalty will be imposed. This
ubparagraph (2) shall not apply if an applicant made no use of the
llocation based on estimated inputs.

(e) The Administrator shall make an allocation pursuant to this
ection only if he is satisfied that the applicant's new or reactivated
efinery capacity or petrochemical plant constitutes a bona fide business
enture. The Administrator shall not issue a license under an allocation
ade pursuant to this section until the new or reactivated refinery
apacity or petrochemical plant has been on stream for not less than 60
ys and until an on-the-spot evaluation of the new or reactivated refinery
apacity or petrochemical plant has been conducted by authorized representatives
f the Oil Import Administration and a determination has been made that

e facility has the actual operational capacity which the applicant s certified in his application. Licenses issued under allocations de pursuant to this section shall expire on the last day of the location period.

(f) If an allocation made under this section 25 has been made on e basis of the reactivation of particular refinery capacity or of a rticular petrochemical plant, no further allocations shall be made der this section on the basis of a change in the status--that is, osure and reactivation--of the particular refinery capacity or trochemical plant.

(g) New facilities which are constructed in Districts I-IV or strict V for the purpose of replacing existing operating facilities the respective districts which have been shut down or which are heduled to be shut down will be evaluated on an individual basis, but no event will the combined actual inputs to the facility which is to replaced and estimated inputs to the new facility form the basis for nputing an allocation under this section or sections 9, 10, or 11.

(h) No allocations made under this section may be sold, assigned, otherwise transferred.

(i) (1) As used in this section 25, "new refinery capacity" or w petrochemical plants" includes expansion of existing facilities the addition of equipment, such as stills, towers, pumps, tanks, elines, and chemical conversion units if and only if the addition n installed independently of existing equipment would constitute inery capacity or a petrochemical plant as defined in section 22. itions which merely increase the throughput of existing equipment not constitute new refinery capacity or petrochemical plants for purpose of obtaining an allocation under this section. Transfers of ipment by an applicant from one of its plants or refineries to ther of its plants or refineries do not constitue new refinery capacity petrochemical plants for the purpose of obtaining an allocation under s section.

(2) As used in this section 25, "reactivated refinery capacity" "reactivated petrochemical plants" means the restoration to operation refinery capacity or a petrochemical plant which had been shut down a period of not less than 12 months.

(j) (1) Subject to the limitations set forth in subparagraph (3) paragraph (b), the Administrator may make allocations of imports of de oil and unfinished oils with respect to new or reactivated refinery acity and petrochemical plants for the last 184 days of this allocation iod, as provided in this paragraph (j). Applications for allocations imports of crude oil and unfinished oil under this paragraph (j) must filed not later than July 17, 1968.

(2) (i) If new or reactivated refinery capacity has come on stream since January 1, 1967, or is scheduled to come on stream at any time during the current allocation period and if the applicant has no other refinery capacity, the allocation shall be computed according to the schedule in paragraph (b) of section 10 or of section 11 as amended by this Amendment 9 on the basis of the quantity of inputs (divided by 184) which it is estimated will be made to such capacity during the last 184 days of the allocation period.

(ii) An applicant eligible for an allocation under this subparagraph (2) may be eligible for an allocation under section 9, 10, or 11; in such instance, the Administrator shall compute allocations under section 25 and under section 9, 10, or 11 and make available to the applicant the larger of the two allocations.

(3) If the applicant has other refinery capacity, the allocation shall be computed under section 10 or 11 (as the case may be) on the basis of inputs to the other capacity plus actual inputs made to the new or reactivated refinery capacity during the period specified in those sections and an allocation shall be computed on the basis of inputs to the other capacity during the period specified in those sections plus estimated inputs to the new or reactivated refinery capacity for the last 184 days, as provided in subparagraph (2) of this paragraph, and the larger allocation shall be made to the applicant.

(4) Allocations with respect to a petrochemical plant shall be computed under section 9 of the regulations in the same manner as provided with respect to refinery capacity under this paragraph (j).

*Sec. 26 Allocations of unfinished oils--Districts I-IV based on production of low sulphur residual fuel oil in Districts I-IV.

mdt. 11/ (a) As used in this section:

(1) "low sulphur residual fuel oil" means residual fuel oil:

(i) which is manufactured in Districts I-IV, and

(ii) which contains not more than 1 percent of sulphur by weight, and

(iii) which is delivered (either directly by the manufacturer or by others following its sale by him) to customers in Districts I-IV who must burn such fuel in order to comply with Federal, State or local requirements.

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*By order of April 30, 1969 (34 F.R. 7535), the Secretary of the Interior indefinitely suspended this section 26.

(2) "Western Hemisphere" means North America, Central America, South America, and the West Indies.

(3) "Desulphurization facility" means a facility which includes equipment for removing sulphur or sulphur compounds from residual fuel oil and which produces low sulphur residual fuel oil.

11/ (b) This section provides for the making of allocations of imports into Districts I-IV of residual fuel oil or fuel oil based upon the production or estimated production of low sulphur residual fuel oil. Allocations made by the Administrator under this section 26 shall be in addition to allocations made under other sections of this regulation, and the Administrator shall make allocations under this section without respect to the quantity of imports available for allocations in Districts I-IV for a particular allocation period under other sections of this regulation. To the extent that the provisions of this section are inconsistent with the provisions of other sections of this regulation, the provisions of this section shall be controlling.

1/ (c) (1) A person who manufactures low sulphur residual fuel oil in a desulphurization facility by desulphurization of residual fuel oil containing at least 2.0 percent sulphur by weight which was derived from crude oil produced in the Western Hemisphere shall receive an allocation of imports of residual fuel oil equal to the amount in barrels of low sulphur residual fuel oil so manufactured. Residual fuel oil imported under such an allocation must be derived from crude oil produced in the Western Hemisphere and must be processed other than by blending by mechanical means either by the person to whom the allocation is made or by the person receiving the residual fuel oil under an exchange agreement.

3/ (2) Upon a showing satisfactory to the Administrator that the construction of a desulphurization facility has been or is about to be completed, the person owning the facility shall be entitled to an initial specific allocation of imports of residual fuel oil on the basis of the quantity of low sulphur fuel oil which he estimates will be produced by the facility during a period of 90 days following the day the facility goes on stream. No license shall be issued under such an allocation earlier than 45 days prior to the date that the newly constructed desulphurization facility is scheduled to go on stream, except in such amounts as may be required for starting and testing the new desulphurization facility, and in no event shall a license be issued under such an allocation until an on-the-spot inspection of the new facility has been conducted by authorized representatives of the Oil Import Administration and a determination has been made that the newly constructed facility will have the operational potential which the applicant has certified to in his application, and that it appears that construction will be completed. The Administrator may make further specific allocations based on the production estimated for succeeding

periods of 90 days each. Residual fuel oil imported under such an allocation must be derived from crude oil produced in the Western Hemisphere and must be processed other than by blending by mechanical means either by the person to whom the allocation is made or by the person receiving the residual fuel oil under an exchange agreement.

/Amdt. 13/ (3) In order to encourage the construction of new desulphurization facilities in Districts I-IV the Secretary may make a general allocation to an applicant if the Secretary is satisfied that an applicant's proposal to construct a desulphurization facility in Districts I-IV constitutes a bona fide business venture and that the construction of such facility will be carried to completion within a reasonable time. Such a general allocation may provide that the applicant shall be entitled, for such a period of time as the Secretary may determine, to specific allocations of imports of residual fuel oil as provided in subparagraph (1) of this paragraph and to initial allocations as provided in subparagraph (2) of this paragraph and to specific allocations as provided in paragraph (d) of this section.

Amdt. 13/ (d) A person who produces low sulphur residual fuel oil by mechanically blending residual fuel oil to be used as fuel which has a viscosity not greater than 275 Saybolt Furol seconds at 122° F., which contains over 1.5 percent sulphur by weight, and which is derived from crude oil produced in the Western Hemisphere with distillate fuel oil which has a viscosity in the range of 22-40 Saybolt Universal seconds at 100° F. and which is manufactured in his refinery capacity or desulphurization facility in Districts I-IV shall receive an allocation of imports of fuel oil equal to the amount in barrels of the fuel oil which had a viscosity in the range of 22-40 Saybolt Universal seconds at 100° F. which was manufactured in his refinery capacity or desulphurization unit, and which was mechanically blended to produce low sulphur residual fuel oil. Fuel oil imported under such an allocation must have a viscosity within 2.0 Saybolt Universal seconds at 100° F., plus or minus, of the viscosity of the distillate fuel oil used for blending, must be derived from crude oil produced in the Western Hemisphere, and must be processed other than by blending by mechanical means either by the person to whom the allocation is made or by the person receiving the residual fuel oil or fuel oil under an exchange agreement.

mdt. 11/ (e) For the purpose of computing import allocations under sections 9, 10, and 25 of this regulation, neither residual fuel oil or fuel oil imported pursuant to an allocation made under this section 26 nor domestic oil received in exchange pursuant to the provisions of section 17 will qualify as either refinery inputs or petrochemical plant inputs. However, the person receiving the imported residual fuel oil or fuel oil under an exchange agreement pursuant to section 17 may count such oils as such inputs.

11/ (f) The Administrator shall make an allocation under subparagraph (1) of paragraph (c) or paragraph (d) of this section only upon receipt from an applicant of a certification satisfactory to the Administrator with respect to the following matters pertaining to the production and delivery of the low sulphur residual fuel oil forming the basis of the application:

(1) location of plant in which produced,

(2) amount and sulphur content,

(3) source of crude oil from which unfinished oils were produced,

(4) source and disposition of unfinished oils,

(5) delivery, either directly by applicant or by others following sale by applicant, to customers in Districts I-IV who are required to burn such fuel oil in order to comply with Federal State or local requirements.

A similar certification as to prospective operations shall be made by an applicant for an allocation under subparagraphs (2) and (3) of paragraph (c). The Administrator may prescribe the form of certifications. An application for an allocation may be filed at any time. To apply for an allocation of imports under this section, an application must be filed with the Administrator in such form as he may prescribe. The Administrator may fix a period of time (not less than 180 days) for the expiration of licenses issued pursuant to specific allocations made under this section.

1/ (g) No allocation made under this section shall be sold, assigned, or otherwise transferred.

5/Sec. 27 Zone allocations -- District V.

(a) In instances in which the Secretary determines that to do so will be consonant with the objectives of Proclamation 3279, as amended, a zone allocation may be made to a person for feedstocks for refinery capacity or a petrochemical plant which will be established in a foreign trade zone in District V or for such a facility which is established in a foreign trade zone. Such a zone allocation will authorize the person to whom it is made to move quantities of foreign crude oil, or unfinished oils, having a non-privileged status,* into a specific foreign trade zone for processing. A zone allocation will not authorize the transfer of crude oil, unfinished oils, or finished products from a foreign trade zone into customs territory.

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*Privileged foreign merchandise is merchandise which is appraised and taxes determined and duties liquidated thereon upon application for admission of the merchandise into the zone, or at any time thereafter and before the merchandise has been manipulated or manufactured in the zone in a manner which has effected a change in its tariff classification. (See 19 CFR 30.6)

(b) A zone allocation may be made for such period of time as the Secretary may determine and shall be subject to such conditions as the Secretary may prescribe.

(c) An application for a zone allocation should be filed with the Administrator. An applicant shall furnish in detail, such information as the Administrator may require, including--

(i) the nature of the facility,

(ii) the location of the facility,

(iii) the products and the quantity of each product to be produced,

(iv) the capital outlay involved,

(v) the average b/d of feedstock inputs to such facilities,

(vi) the identification of the feedstocks and the source thereof,

(vii) the date that the facility went on stream or is scheduled to go on stream,

(viii) the kinds and quantities of unfinished oils, finished products, or petrochemicals to be exported from the foreign trade zone; the kinds and quantities of unfinished oils or finished products which will be transferred from the foreign trade zone to customs territory under allocations made pursuant to sections 9, 11, 13, 25 and 28; the kinds and quantities of products to be shipped in bond from the zone for offshore use; and the kinds and quantities of petrochemicals to be transferred to customs territory from the foreign trade zone.

(d) Crude oil and unfinished oils moved into a foreign trade zone rsuant to a zone allocation made under this section shall remain in a n-privileged status and shall be processed in a particular zone and cility for which the allocation was made.

(e) When a zone allocation has been made under this section, the ministrator shall issue a license or licenses based on the allocation ecifying the quantities of crude oil or unfinished oils which may be ved into the foreign trade zone, and the period of time such license licenses shall be in effect. The Administrator may amend such censes.

5/Sec. 28 Allocations of low sulphur residual fuel oil--District V.

(a) This section provides for the making of allocations of imports into District V of low sulphur residual fuel oil to be used as fuel in District V. As used in this section 28, "low sulphur residual fuel oil" means (1) residual fuel oil to be used as fuel which is manufactured in a foreign area and which contains not more than five tenths of one percent (0.5%) sulphur by weight, or (2) residual fuel oil to be used as fuel which is manufactured by facilities in a foreign trade zone located in District V and which has a sulphur content not exceeding the percent by weight required by local government requirements.

(b) To be eligible for an allocation of low sulphur residual fuel oil under this section, a person must:

(1) Be in the business in District V of selling residual fuel oil to be used as fuel and have under his management and operational control a deep-water terminal located in District V into which there has been delivered residual fuel oil to be used as fuel which he owned at the time of delivery, such delivery being the first delivery of that oil into a deep-water terminal in District V; or

(2) Be in the business in District V of selling residual fuel oil to be used as fuel and have a throughput agreement (warehouse agreement) with a deep-water terminal operator under which agreement the person has delivered to the terminal residual fuel oil to be used as fuel which he owned when it was so delivered, such delivery being the first delivery of that oil into a deep-water terminal in District V. For the purposes of this section, "throughput agreement" means an agreement which provides for the delivery to a deep-water terminal by a person of residual fuel oil which he owns and for a right in such person to withdraw on call an identical quantity of such oil from the terminal. A bona fide throughput agreement will be deemed to exist only if the person operating under the agreement owns the oil at the time it is delivered to the terminal and only if that delivery is the first delivery of that oil into a deep-water terminal in District V.

(c) The maximum level of imports of residual fuel oil to be used as fuel into District V for a particular period, January 1 through December 31, shall be the level of imports of that product into District V during the calendar year 1957 as adjusted by the Secretary of the Interior as he may determine to be consonant with the objectives of Proclamation 3279, as amended.

(d) (1) The Administrator shall make allocations and issue licenses to each eligible applicant in District V of such quantities of low sulphur residual fuel oil to be used as fuel as the applicant certifies are required by the applicant to meet his obligations under firm existing contracts between the applicant and customers in District V.

(2) In the event that firm contracts which form the basis of an allocation are terminated or renegotiated, the holder of the allocation shall so advise the Oil Import Administration in writing and the allocation will be correspondingly adjusted.

(e) No allocations made pursuant to this section may be sold, assigned, or otherwise transferred.

[Amdt. 30] Sec. 29 (Revoked)

[Amdt. 30] Sec. 29A (Revoked)

Sec. 30 Allocations of No. 2 Fuel Oil--District I.

26/ (a) For the purposes of this section:

(1) The term "No. 2 fuel oil" means a finished product which has the following physical and chemical characteristics:

Closed Cup Flash Point °F.	Min. 100
Pour Point °F.	Max. 20
Water and Sediment, percent	Max. 0.10
Carbon Residue on 10 percent Residuum percent	Max. 0.35
Distillation Temperature °F.	Max. 675
90 percent point	Min. 540
Viscosity, Saybolt Universal	Max. 40.0
Seconds at 100° F.	Min. 33.0
Gravity A.P.I.	Min. 30.0

(2) The term "Western Hemisphere" means North America, Central America, South America, and the West Indies.

(3) The term "deep water terminal" means a permanent land installation which:

(i) consists of bulk storage tanks having not less than 100,000 barrels of operational capacity, pumps and pipelines used for storage, transfer and handling of No. 2 fuel oil;

(ii) is on waterways that permit the safe passage to the installation of a tanker rated 15,000 cargo deadweight tons, drawing not less than 25 feet of water; and

(iii) has a berth that will permit the delivery of No. 2 fuel oil into the installation by direct connection from a tanker rated at 15,000 cargo deadweight tons, drawing not less than 25 feet of water, and moored in the berth. Cargo deadweight tons represent the carrying capacity of a tanker, in tons of 2,240 pounds, less the weight of fuel, water, stores and other items necessary for use on a voyage.

(4) The term "throughput agreement" means a written agreement which provides for the delivery to a deep water terminal by a person of No. 2 fuel oil which he owns at the time of delivery to the terminal and for a right in such person to withdraw on call an identical quantity of such oil from the terminal. Any transaction between persons involving sales, purchases, or exchanges of No. 2 fuel oil which were designed to gain allocation benefits for a person who would not otherwise be eligible shall not be deemed to constitute a throughput agreement.

dt. 26/ (b) For the period January 1, 1971 through December 31, 1971, 40,000 b/d of imports of No. 2 fuel oil which is manufactured in the Western Hemisphere from crude oil produced in the Western Hemisphere are available for allocation in District I to eligible persons having qualified terminal inputs of No. 2 fuel oil in this district.

dt. 26/ (c) (1) Except as provided in subparagraph (2) of this paragraph, a person shall be eligible for an allocation of imports into District I of No. 2 fuel oil under paragraph (e) of this section:

(i) If he is in the business in District I of selling No. 2 fuel oil and has under his management and operational control a deep water terminal which is located in District I and in which No. 2 fuel oil is handled, or

(ii) If he is in the business in District I of selling No. 2 fuel oil and has a throughput agreement with a deep water terminal operator in District I who does not have a crude oil import allocation in Districts I-IV.

(2) No person who has an allocation of imports into Districts I-IV of crude oil under sections 9, 10, or 25 of this regulation shall be eligible for an allocation under paragraph (e) of this section.

dt. 26/ (d) A person seeking an allocation under paragraph (e) of this section must file an application with the Administrator on such form as he may prescribe no later than fifteen (15) days after the publication of this section in the Federal Register. The application shall disclose such information as the Administrator may deem necessary in such detail as he may require.

t. 26/ (e) (1) For the period January 1, 1971 through December 31, 1971, each eligible applicant under this section shall receive an allocation of imports into District I of No. 2 fuel oil which has been manufactured in the Western Hemisphere from crude oil produced in the Western Hemisphere computed according to the following formula:

$$\frac{\begin{array}{l}\text{Applicant's qualified}\\ \text{terminal inputs - avg. b/d}\\ \text{for the period Oct. 1, 1969}\\ \text{through September 30, 1970}\end{array}}{\begin{array}{l}\text{Avg. b/d of all qualified}\\ \text{terminal inputs for the}\\ \text{period October 1, 1969}\\ \text{through September 30, 1970}\end{array}} \quad \text{X} \quad \begin{array}{l}\text{40,000 avg. b/d}\\ \text{of No. 2 fuel oil}\end{array}$$

However, each such allocation shall be reduced by the amount of any licenses issued to the applicant under an interim allocation for the allocation period.

(2) The Administrator shall provide that each license issued under an allocation made pursuant to this paragraph (e) shall expire on December 31, 1971.

(f) (1) An eligible applicant may count as qualified terminal inputs quantities of No. 2 fuel oil:

(i) delivered during the 12-month period ending September 30, 1970, into a deep water terminal in District I which was under his management and operational control or into a deep water terminal with which the eligible applicant had a throughput agreement before the oil was delivered, if he owned the oil when it was placed in the terminal and if the delivery constituted the first delivery of that oil to a deep water terminal in District I; or

(ii) which the applicant owned, sold to a Federal agency or to any agency of a State or a political subdivision of a State, and delivered during the 12-month period ending September 30, 1970, to a deep water terminal in District I for the account of such agency, providing such delivery constituted the first delivery of that oil to a deep water terminal in District I; or

(iii) which was delivered to applicant's deep water terminal in District I as a first delivery into a deep water terminal in District I under a written agreement to purchase such oil and to which, pursuant to such agreement, the applicant took title during the 12-month period ending September 30, 1970 upon withdrawal by him from the terminal.

(2) For the purpose of this paragraph (f), storage of No. 2 fuel oil at a refinery in which the oil was produced or delivery of No. 2 fuel oil into a deep water terminal under the management and operational control of a person who has an allocation of imports of crude oil into Districts I-IV shall not be deemed to be a first delivery to a deep water terminal in District I.

(g) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred. Licenses issued under allocations made pursuant to this section shall permit the importation only of No. 2 fuel oil which is manufactured in the Western Hemisphere from crude oil produced in the Western Hemisphere. No. 2 fuel oil imported under an allocation made pursuant to this section shall be sold for use as fuel in District I.

Sec. 31 Asphalt

(a) As used in this section, the term "asphalt" means (1) if asphalt cement, a solid or semi-solid cementitious material which is

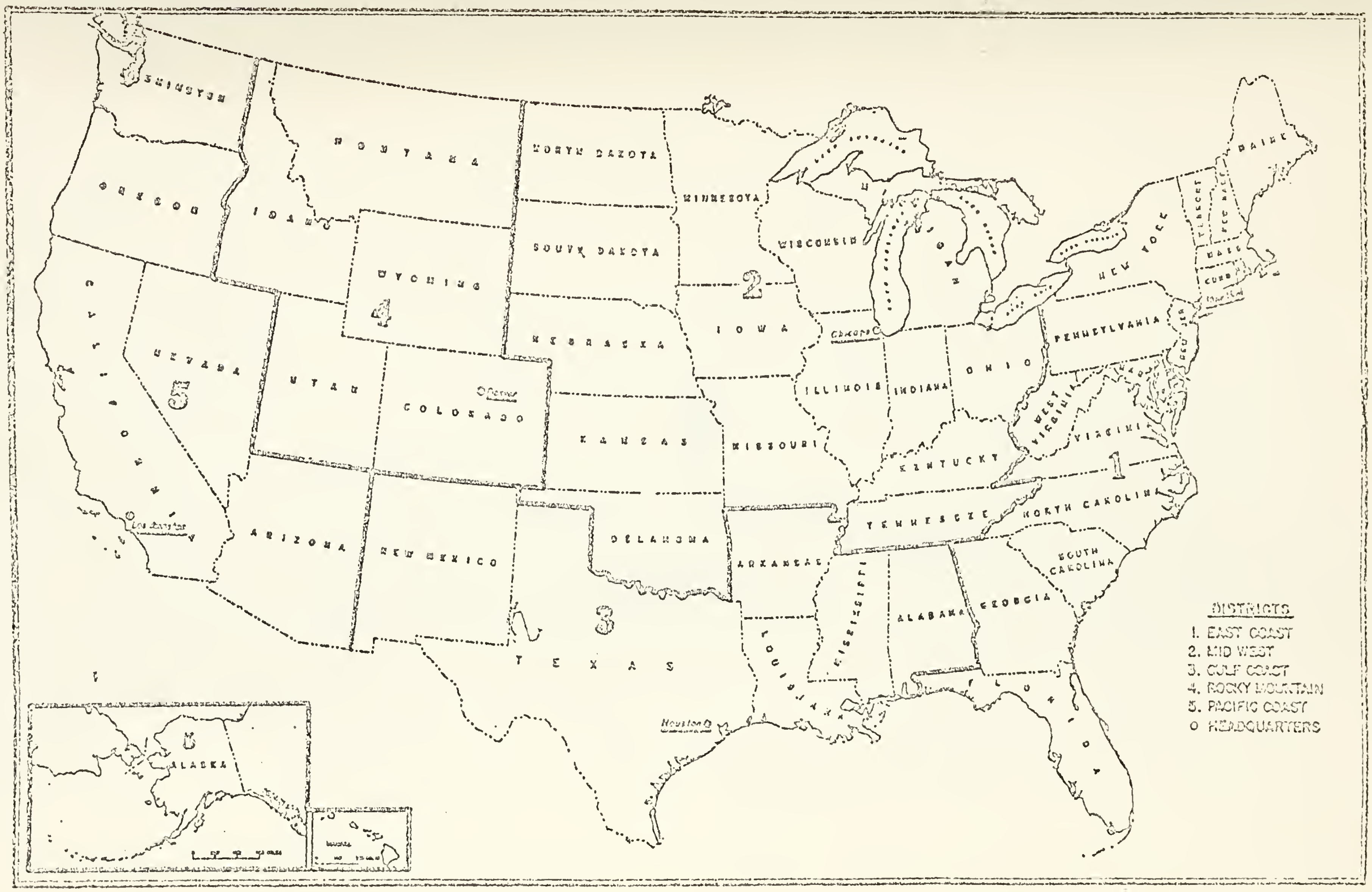
refined from crude oil and in which the predominant constituents are bitumens, and (2) if liquid asphalt, a product (i) the principal constituent of which is a cementitious material that, when refined from crude oil, was a solid or semi-solid consisting predominantly of bitumens, (ii) the kinematic viscosity of which is not less than 250 centistokes at 140° F., and (iii) in which hydrocarbon solvents do not exceed 40 percent of the product by volume.

(b) For the allocation period January 1, 1971 through December 31, 1971, the Administrator shall make an allocation of imports of asphalt into Districts I-IV to any person who certifies that such imports are required to meet obligations under contracts with, or purchase orders from, customers in Districts I-IV or to meet his own construction or manufacturing requirements. The allocation shall be in the quantity which such person certifies in writing is required to meet such obligations or requirements.

(c) Asphalt imports under an allocation made pursuant to paragraph (b) shall not be further processed except by blending by mechanical means or by air blowing and shall not be burned for lighting or for the generation of heat or power.

(d) Applications for allocations under this section may be filed with the Administrator at any time during the period. An application must be filed in such form as the Administrator may prescribe. All licenses issued under allocations made pursuant to this section shall be valid only during the period January 1, 1971 through December 31, 1971.

(e) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred.


DISTRICTS
1. EAST COAST
2. MID WEST
3. GULF COAST
4. ROCKY MOUNTAIN
5. PACIFIC COAST
O HEADQUARTERS
WASHINGTON
OREGON
CALIFORNIA
Los Angeles
NEVADA
5
IDAHO
MONTANA
WYOMING
4
UTAH
COLORADO
Denver
ARIZONA
NEW MEXICO
NORTH DAKOTA
SOUTH DAKOTA
NEBRASKA
KANSAS
OKLAHOMA
TEXAS
3
Houston
MINNESOTA
2
IOWA
MISSOURI
ARKANSAS
LOUISIANA
WISCONSIN
MICHIGAN
Chicago
ILLINOIS
INDIANA
OHIO
KENTUCKY
TENNESSEE
MISSISSIPPI
ALABAMA
GEORGIA
FLORIDA
SOUTH CAROLINA
NORTH CAROLINA
VIRGINIA
1
WEST VIRGINIA
PENNSYLVANIA
NEW YORK
NEW JERSEY
VERMONT
NEW HAMPSHIRE
MAINE
MASS
CONN
ALASKA
5

APPENDIX C

Title 32A—National Defense, Appendix

CHAPTER XI—OIL IMPORT APPEALS BOARD

OIAB—RULES AND PROCEDURES

On May 9, 1972, there was published in the FEDERAL REGISTER (37 FR 9347–9349) a notice and text of proposed rule making by the Oil Import Appeals Board, acting through the Office of Hearings and Appeals, Department of the Interior, proposing a revision of its rules and procedures found at Chapter XI of Title 32A, Code of Federal Regulations. On May 20, 1972, there was published in the FEDERAL REGISTER (37 FR 10495) a notice of editorial correction to the proposed revision.

Interested persons were invited to submit written comments, suggestions, or objections regarding the proposed revision within 30 days from the date of publication of the original notice of proposed rule making in the FEDERAL REGISTER. All comments received have been carefully considered by the Oil Import Appeals Board in adopting the revision to Chapter XI of Title 32A, Code of Federal Regulations, as set forth below.

Changes made in the final revision, other than minor editorial changes, follow:

Section 7 now provides that upon request and for good cause shown, the Oil Import Appeals Board may postpone as well as advance the date of a hearing on a petition.

Section 13 has been revised to clarify the time periods during which interested persons may file statements in support of or in opposition to a petition before and after a hearing on the petition. Also, section 13 now extends to comments submitted by the Director, Office of Oil and Gas, Department of the Interior, the prohibition that the Oil Import Appeals Board may not consider statements of interested persons on a petition unless copies have been furnished to the petitioner or his representative.

Section 15 is revised to require the Director, Office of Oil and Gas, Department of the Interior, to send to the petitioner, or his representative, a copy of any comments that he may submit to the Oil Import Appeals Board on a petition.

Effective date. This revision of the rules and procedures of the Oil Import Appeals Board shall be effective on January 29, 1973.

The revised text of chapter XI reads as follows:

Sec.
1 Purpose.
2 Establishment of Board.
3 Authority of the Board.
4 Representation before the Board.
5 Time and place to file petitions.
6 Form and content of petition.
7 Hearings on petitions.
8 Notice of hearing.
9 Unexcused absence of a petitioner.
10 Conduct of hearing.

AUTHORITY: Proclamation No. 3279 of March 10, 1959, as amended, 24 FR 1781, 10133, 28 FR 4077, 35 FR 4321; sec. 232 of The Trade Expansion Act of 1962, 76 Stat. 877; and Oil Import Regulation 1, as revised, 28 FR 14318, and amended (Amendment 19, 35 FR 163, Amendment 23, 35 FR 12759, and Amendment 24, 35 FR 16976).

Section 1 Purpose.

These rules govern the procedures on petitions to the Oil Import Appeals Board, hereinafter referred to as the "Board." They shall be construed to secure the just, speedy, and inexpensive determination of every proceeding.

Sec. 2 Establishment of Board.

Pursuant to section 4 of Presidential Proclamation 3279, dated March 10, 1959 (24 FR 1781), as amended, hereinafter referred to as the "Proclamation," the Board was established by section 21 of Oil Import Regulation 1 (24 FR 1907), as revised and amended. Oil Import Regulation 1 is hereinafter referred to as the "Regulation." The Board is comprised of a representative each from the Departments of the Interior, Justice, and Commerce, designated respectively by the heads of such Departments. The Department of the Interior member serves as chairman.

Sec. 3 Authority of the Board.

(a) The Board considers petitions for relief by persons claiming to be affected by the regulation and may, within the limits of the maximum levels of imports established in section 2 of the proclamation:

(1) Reverse or modify on grounds of error actions taken by the Director, Office of Oil and Gas, on applications for allocations under the regulation;

(2) Modify any allocation made to any person under the regulation on the grounds of exceptional hardship;

(3) Grant allocations of crude oil and unfinished oils in special circumstances to persons with importing histories who do not otherwise qualify for allocations under the regulation;

(4) Grant allocations of finished products on the grounds of exceptional hardship to persons who do not otherwise qualify for allocations under the regulation; and

(5) Review the revocation or suspension of any allocation or license.

(b) Only petitions relating to matters covered by paragraph (a) of this section may be considered by the Board. Petitions requesting a change or disregard of the proclamation or the regulation may not be considered.

Sec. 4 Representation before the Board.

Subject to the provisions contained in Part 1 of Title 43, Code of Federal Regulations, a petitioner may appear in person, by counsel or other qualified representative, and participate fully in any proceeding before the Board held pursuant to these rules.

Sec. 5 Time and place to file petitions.

(a) A petition requesting the reversal or modification of an action of the Director, Office of Oil and Gas, with reference to an allocation or modification, or a grant of an allocation shall be filed with the Board not later than 30 calendar days after the beginning of the applicable allocation period or the date of the granting or denial of an allocation, whichever is later.

(b) A petition requesting review of the suspension or revocation of an allocation or license shall be filed with the Board not later than 30 calendar days after mailing of a notice of suspension or revocation by the Director, Office of Oil and Gas.

(c) The Board may consider a petition not filed within the time specified in paragraphs (a) and (b) of this section upon a showing of good cause.

(d) Petitions and related documents and exhibits shall be addressed to the Oil Import Appeals Board and filed with the Board (address: Oil Import Appeals Board, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203).

Sec. 6 Form and content of petition.

A petition must be in writing, signed by the petitioner or his duly authorized representative or attorney, clearly marked as "petition," and filed in sextuplicate. Each petition shall be organized under headings, as follows: (a) The relief sought by the petitioner, expressed in barrels per day (b/d) and in total barrels (bbls.) during the applicable allocation period; (b) the pertinent provisions of the regulation under which the Board has authority to grant such relief; (c) the decision of the Director, Office of Oil and Gas involved in the petition, if any; (d) the relevant facts in support of the petition; and (e) the arguments in support of the petition.

Sec. 7 Hearings on petitions.

A petitioner may request a hearing before the Board on his petition by submitting an unqualified request therefor, in writing, with the filing of his petition. The Board in its discretion may grant a hearing. Where a hearing has not been requested by the petitioner, the Board

may, in its discretion, schedule a hearing on the petition. Hearings will be scheduled in the discretion of the Board with due consideration to the regular order of filing of petitions and other pertinent factors. On request and for good cause shown, the Board may in its discretion advance or postpone a hearing. A party failing to request a hearing as provided in this section may be deemed to have submitted his case upon the Board record.

Sec. 8 Notice of hearing.

The petitioner shall be given at least 14 calendar days' notice of the time and place set for hearings, unless otherwise agreed. Such notice will apprise the petitioner of the requirements of section 12 for submission of briefs, memoranda of law, documentary evidence or other necessary information. In scheduling hearings the Board will give due regard to the desires of the petitioners and to the requirement for just and prompt disposition of petitions. Public notice of the scheduling of a hearing will also be posted in the office of the Board.

Sec. 9 Unexcused absence of a petitioner.

The unexcused absence of a petitioner at the time and place set for hearing will not be occasion for delay. In the event of such absence the hearing will proceed and the case will be regarded as submitted by the absent petitioner on the record before the Board. The Board shall advise the absent petitioner of the content of the proceedings and that he has 5 days from the receipt of such notice within which to show cause why the petition should not be decided on the record made.

Sec. 10 Conduct of hearing.

(a) Any member of the Board may conduct a hearing.

(b) Hearings shall be as informal as may be reasonable and appropriate in the circumstances and shall be public. Petitioner may offer at a hearing such relevant evidence as he deems appropriate, subject to the sound discretion of the presiding member in supervising the extent and manner of presentation of such evidence and subject to the requirements of section 12(b). In general, admissibility will hinge on relevancy and materiality. Arguments bearing on the policy embodied in the proclamation or in the regulation shall not be received. Letters or copies thereof, affidavits, or other evidence not ordinarily admissable under the generally accepted rules of evidence, may be admitted in the discretion of the presiding member. The weight to be attached to evidence presented in any particular form will be within the discretion of the Board, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by a petitioner and the Director of the Office of Oil and

Gas, or his representative, may be regarded and used as evidence at the hearing. The petitioner and the Office of Oil and Gas may stipulate the testimony that would be given by a witness if the witness were present. The Board may in any case require evidence in addition to that offered by a petitioner.

(c) Witnesses before the Board will be examined orally under oath or affirmation, unless the facts are stipulated, or the Board shall otherwise order. If the testimony of a witness is not given under oath, the Board shall call to the attention of the witness the provisions of title 18, United States Code, sections 287 and 1001, prescribing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof. The Board may, in its discretion, permit Government officials participating in the hearing to examine any witness.

(d) Hearings will be recorded verbatim and transcripts thereof shall be made, costs of transcripts to be borne by the requesting parties. Fees for those transcripts prepared from recordings by Office of Hearings and Appeals employees, will be at rates which cover the cost of manpower, machine use and materials, plus 25 percent, adjusted to the nearest 5 cents.

Sec. 11 Consolidation.

Upon good cause shown, or upon its own initiative, the Board may at the same time hear or decide two or more petitions, if it determines that such action is appropriate.

Sec. 12 Briefs, memoranda of law, documentary evidence, and other information.

(a) The Board may on its own initiative require the filing, either before or after hearing, of briefs, memoranda of law, documentary evidence, or any other information it considers necessary for the disposition of a petition.

(b) Any briefs, memoranda, documents, statistics, and other data and statements, but not including witnesses' testimony, to be presented or used at a hearing, shall be filed in sextuplicate with the Board not later than 6 days, exclusive of Saturdays, Sundays, Federal legal holidays and other nonbusiness days, prior to the date of hearing.

Sec. 13 Statements by interested persons other than petitioner.

(a) Persons interested in opposing or supporting a petition, other than petitioner, may file in sextuplicate with the Board written statements on issues raised by the petition at any time prior to 7 calendar days before the scheduled date of the hearing on the petition. At the same time such statement is filed with the Board, a copy shall be sent to the

petitioner or his representative by the interested person. The petitioner may file in sextuplicate with the Board a written reply within 7 calendar days after receiving such statements.

(b) Persons interested in opposing or supporting a petition other than petitioner, may file in sextuplicate with the Board written statements on issues raised by the hearing within 7 calendar days following said hearing, unless extension is granted by the Board for good cause. At the same time such a statement is filed with the Board, a copy shall be sent to the petitioner or his representative by the interested person. The petitioner may file in sextuplicate with the Board a written reply within 7 calendar days after receiving such statements, unless extension is granted by the Board for good cause.

(c) The Board will not consider statements made pursuant to paragraph (a) or (b) of this section or section 15, unless copies have been furnished to petitioners or their representatives in a timely fashion by the interested persons.

Sec. 14 Private communications prohibited.

Oral or written communications by petitioners, interested private parties, or their agents, concerning the facts or law of a petition, or policy of the Board, will not be considered by individual members of the Board, unless such communications are made part of the record before the Board.

Sec. 15 Participation by the Office of Oil and Gas.

A copy of each petition filed with the Board and a copy of each written statement on issues raised by a petition filed pursuant to section 13 will be forwarded promptly to the Director, Office of Oil and Gas, for purposes of information and for any comment which the Director may deems appropriate and wish to submit to the Board. Any comment submitted to the Board by the Director must be filed with the Board and sent to the petitioner or his representative. The Board, when possible, will advise the Director, at least 1 week in advance, of the time and place of any hearing which may be scheduled upon a petition and will request that the Director or his representative appear at the hearing and present information and arguments on behalf of the Office of Oil and Gas.

Sec. 16 In camera orders.

(a) Upon request by the petitioner the Board may order that oral testimony or written evidence which discloses trade secrets or privileged commercial or financial information be placed in camera. The order shall include: (1) A description of the documents and testimony covered by it, and (2) a concise statement of the reasons for granting in camera treatment.

(b) Documents and transcripts of testimony subject to in camera orders shall be segregated from the public record and filed in a sealed envelope, bearing the title and docket number of the proceedings, and the notation "In camera record under section 16." Subject to the provisions of paragraph (c) of this section, documents and transcripts subject to an in camera order will be made accessible only to the petitioner, his counsel, authorized Board personnel, members of the Board, and court personnel concerned with judicial review. The right of the Board and of reviewing courts to disclose in camera data to the extent necessary for the proper disposition of the proceeding is specifically reserved.

(c) Documents and transcripts of testimony subject to an in camera order shall be released to third parties only if required by law.

Sec. 17 Decisions of the Board.

(a) The Board will take such action on petitions as it deems appropriate. Decisions of the Board will be made in writing. All Board members will participate in the decisionmaking; however, concurrence of any two Board members shall be sufficient to constitute a decision of the Board. Decisions of the Board shall be final and not subject to administrative review.

(b) Each decision upon a petition to the Board will contain a concise statement of the reasons for the Board's action.

(c) A copy of the decision shall be furnished promptly to the petitioner or his representative. All decisions of the Board shall be available for inspection by the public.

Sec. 18 Reconsideration of decisions.

Not later than 30 calendar days after issuance of a decision of the Board, a petitioner may file with the Board a petition for reconsideration of such decision, setting forth the relief desired and the grounds therefor. Such petition must clearly state the issues which the petitioner had no opportunity to argue before the Board. The Board, within its discretion, may decide the matter on the petition, or it may schedule a public hearing thereon in accordance with section 8. It may specify any issues on which the Board desires to hear arguments.

Sec. 19 Reopening of proceedings.

(a) *Reopening prior to decision.* At any time prior to its decision, the Board may reopen the proceeding for the reception of further evidence.

(b) *Reopening after decision.* Whenever, during the applicable allocation period, a petitioner subject to a decision of the Board is of the opinion that material changes of fact or of law, which occurred after issuance of the decision,

warrant that such decision be altered, modified, or set aside, such petitioner may file with the Board a petition requesting a reopening of the proceeding for that purpose. Such petition shall state the relief desired, the specific changes of fact or of law warranting a reopening of the proceeding, and shall include such evidence and arguments as will provide the basis for a Board decision on the petition. The Board, in its discretion, may decide the matter on the petition, or it may serve upon the petitioner a notice for a public hearing thereon. Said notice shall indicate the time and place of hearing, and it may specify any issues on which the Board desires to receive further evidence or hear arguments.

Sec. 20 Clerical mistakes.

The Board may at any time, without advance notice to the petitioner and without hearing, make such changes in a Board decision as are required to correct clerical or other errors arising from oversight or omission which have no adverse effect on petitioner.

Sec. 21 Duty to inform the Board.

The petitioner shall promptly notify the Board of any change in its eligibility (according to the criteria contained in paragraphs (a) and (g) of section 4) occurring prior to the end of the applicable allocation period.

Sec. 22 Record open to the public.

The petition, transcript of hearing, exhibits, written statements filed by interested parties, all papers filed with the Board, and matters of official notice or record, shall constitute the record for decision and shall be open to the public, subject to the provisions of section 16.

Dated: January 17, 1973.

STANLEY NEHMER,
Member.
GEORGE H. SCHUELLER,
Member.
LEWIS S. FLAGG, III,
Chairman.

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